

ADRIENNE MALLARD

*

IN THE

*

COURT OF APPEALS

*

OF MARYLAND

v.

*

**Petition Docket No. 479
September Term, 2020**

*

**(No. 3030, Sept. Term, 2018
Court of Special Appeals)**

*

POTOMAC CONCRETE CO., INC., et al.

*

**(No. CAL17-13531, Circuit Court
for Prince George's County)**

ORDER

Upon consideration of the motion for reconsideration and the supplement filed thereto, in the above-captioned case, it is this 22nd day of June, 2021

ORDERED, by the Court of Appeals of Maryland, that the above pleadings be, and they are hereby, **DENIED**.

/s/ Mary Ellen Barbera
Chief Judge

ADRIENNE MALLARD

v.

POTOMAC CONCRETE CO., INC., et al.

* **IN THE**
* **COURT OF APPEALS**
* **OF MARYLAND**
* **Petition Docket No. 479**
* **September Term, 2020**
* **(No. 3030, Sept. Term, 2018**
* **Court of Special Appeals)**
* **(No. CAL17-13531, Circuit Court**
for Prince George's County)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, the supplements, and the answers filed thereto, in the above-captioned case, it is this 23rd day of April, 2021

ORDERED, by the Court of Appeals of Maryland, that the petition and the supplements be, and they are hereby, **DENIED** as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Mary Ellen Barbera
Chief Judge

Circuit Court for Prince George's County
Case No. CAL1713531

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3030

September Term, 2018

ADRIENNE MALLARD

v.

POTOMAC CONCRETE COMPANY, INC., et
al.

Fader, C.J.,
Shaw Geter,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: January 6, 2021

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

This case arises out of a trip and fall accident. Adrienne Mallard (“Mallard”) filed a Complaint in the Circuit Court for Prince George’s County against Potomac Concrete Company, Inc. (“Potomac Concrete”) and Creative Landscapes by Gregory, Inc. (“CLG”) alleging negligence. Potomac Concrete was dismissed from the action prior to trial. A three-day jury trial resulted in a verdict in favor of CLG. In this pro se appeal, Mallard presents 25 questions for this Court’s review. As most issues were not properly argued or preserved for our review, we have rephrased the only relevant questions as follows:

1. Did the circuit court err in granting Potomac Concrete’s Motion for Summary Judgment?
2. Did the circuit court err by failing to read the pattern jury instructions verbatim?
3. Did the circuit court err in precluding evidence regarding the riser heights?

For the reasons set forth below, we affirm the circuit court.

BACKGROUND & PROCEDURAL HISTORY

On June 6, 2014, Mallard was working at a model home (“the Property”) in Beltsville, Maryland. As she was leaving the Property, she fell on the exterior front steps. Mallard stated that she stepped down with her right foot onto the first step, then moved her left foot as if she was already on the walkway, not realizing there was a second step. Mallard alleged that the step did not conform with relevant codes and did not have a color contrast in violation of relevant codes.

Prior to trial, Potomac Concrete filed a Motion for Summary Judgment, arguing that they poured the concrete for the front stoop at the Property, but had no involvement

in the design or installation of the brick step and walkway. The Court granted Potomac Concrete's motion.

At trial, the Court heard arguments from CLG to preclude any evidence regarding the riser heights of the steps. The Court ruled that, based on testimony of liability expert Gregory Harrison, Ph.D., P.E., the riser height did not cause or contribute to Mallard's fall. After three days of trial, the jury returned a verdict in favor of CLG.

After trial, Mallard filed a Motion for Judgment Notwithstanding the Verdict and a Motion for a New Trial. Both motions were denied by the Court. This timely appeal follows.

DISCUSSION

I. POTOMAC CONCRETE'S MOTION FOR SUMMARY JUDGMENT

The only cause of action alleged against Potomac Concrete was negligence. The Court initially denied Potomac Concrete's motion for summary judgment. After further discovery and depositions, Potomac Concrete filed a Motion for Reconsideration of the summary judgment motion. Mallard appears to argue that the court erred in granting Potomac Concrete's motion because another judge previously denied the Motion for Summary Judgment.

When reviewing an order granting summary judgment, we must decide whether there were disputes of material fact before the circuit court. *Koste v. Town of Oxford*, 431 Md. 14, 24-25 (2013). If there is no genuine dispute of material fact, this Court determines "whether the Circuit Court correctly entered summary judgment as a matter of

law.” *Id.* at 25 (Internal quotations and citations omitted). We perform this review *de novo*. *Id.*

Maryland Rule 2-501(a) provides that “[a]ny party may file at any time a motion for summary judgment on all or part of an action.” The denial of a motion for summary judgment is an interlocutory order, thus “it is within the power of the trial court later to grant a renewal of a summary judgment motion.” *Azarian v. Witte*, 140 Md. App. 70, 85 (2001) (Internal quotations and citations omitted). Parties may resubmit a motion at a later point in the proceedings, particularly “where there has been some change of fact or law which substantially justifies the resubmission.” *Id.* (Internal quotations and citations omitted).

In this case, the Court initially denied Potomac Concrete’s Motion for Summary Judgment without argument. Potomac Concrete participated in further discovery and depositions, which elicited additional evidence in support of Potomac Concrete’s motion. Potomac Concrete cited the following in support of its Motion for Reconsideration: (1) CLG’s corporate designee stated it did not contend that Potomac Concrete did anything to cause or contribute to any of Mallard’s injuries; (2) Mallard’s only arguments were that the Defendants collectively failed to ensure the step tread riser heights met the code requirements for uniformity, violated the requirement to have a strong color contrast on all steps, and violated the code requirement for at least one handrail; (3) CLG’s Supervisor of Masonry and Hardscaping testified that CLG was responsible for installing the brick step that did not conform with riser heights and did not have a strong color

contrast; and (4) Potomac Concrete's corporate designee testified that Potomac Concrete is not responsible for handrail installation.

On the first day of trial, the court heard arguments with respect to Potomac Concrete's motion to reconsider the motion for summary judgment. During argument, Potomac Concrete explained that it contracted to pour all of the concrete work at the Property, including the walls, slab, and front stoop. Potomac Concrete argued that it was undisputed that it was not involved with any construction or installation of the brick walkway, brick step, or a handrail. Mallard opposed the motion for reconsideration, but specifically stated she "[did] not dispute anything that [Potomac Concrete] just said as far as the facts."

To prevail on the theory of negligence, a plaintiff must prove the existence of a duty owed to the plaintiff, a breach of that duty, and an injury proximately caused by that breach. *See Pendleton v. State*, 398 Md. 447, 458 (2007). Mallard alleged that Potomac Concrete created the dangerous and defective condition of the stairway and owed a duty to repair the negligently constructed staircase. It was undisputed that Potomac Concrete did not construct the stairway in question, thus they did not create the defective and dangerous condition on which Mallard fell. It was also undisputed that Mallard's injuries were not caused by the concrete stoop that was constructed by Potomac Concrete.

Potomac Concrete's Motion for Reconsideration was entirely appropriate, given the additional information elicited during discovery. There was no genuine issue of

material fact before the court, thus the court did not err in granting Potomac Concrete's motion.

II. PATTERN JURY INSTRUCTION

Mallard contends that the circuit court erred by not "read[ing] the jury instruction[s]." Maryland Rule 8-504(a)(6) requires that a brief "shall ... include ... [a]rgument in support of the party's position on each issue." Arguments that are "not presented with particularity will not be considered on appeal." *Klaunberg v. State*, 355 Md. 528, 552 (1999). Though Mallard objected at trial, arguing that the pattern instructions were not read verbatim, Mallard fails to articulate on appeal which instruction was read improperly or provide argument in support of this contention. Thus, we will not consider it.

III. EVIDENCE REGARDING THE HEIGHT OF THE RISERS

Mallard argues that the court erred by precluding her from offering any evidence and testimony regarding the riser heights. On the first day of trial, the Court heard argument regarding CLG's Motion *in Limine* to preclude evidence and testimony with respect to the riser heights of the steps. Mallard's liability expert, Gregory Harrison, Ph.D., P.E., testified in his deposition that the riser height did not cause or contribute to Mallard's fall. The Court ruled that any evidence mentioning the riser height would be precluded as it was irrelevant to the cause of action.

We review the trial court's admissibility of relevant evidence under an abuse of discretion standard. *See Brooks v. State*, 439 Md. 698, 708 (2014). Maryland Rule 5-401

provides that relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” In this case, the circuit court heard testimony that the riser height did not cause or contribute to Mallard’s fall or injuries. Thus, any evidence regarding the riser height is not of consequence to the determination of the action. The circuit court did not abuse its discretion in precluding evidence and testimony regarding the riser heights as they had no bearing on the event.

**JUDGMENTS OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

COPY

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

Adrienne Mallard

Plaintiff(s)

VS

CAL 17-13531

Potomac Concrete Co. Inc

Defendant(s)

JUDGMENT

This matter having been decided by:

☒ A judge;

☐ A jury verdict,

with Judge Lombardi presiding, it is

this 29th day of October, 2018

ORDERED AND ADJUDGED that:

☐ the complaint is dismissed without leave to amend.

☒ judgment is granted in favor of the Defendant,

Potomac Concrete Co., Inc

(Party/Parties for Whom Judgment Granted)

And against the Plaintiff,

Adrienne Mallard

(Party/Parties Against Whom Judgment Granted)

☒ in the sum of \$ 0

☐ all relief is denied.

☒ Costs are assessed against the Plaintiff, Adrienne Mallard.

Sydney J. Harrison
CLERK OF THE COURT

ENTERED: 11-9-18

128E

No. 479
September Term, 2020
CAL 17-3531

Court of Appeals of Maryland

Adrienne Mallard

Petitioner

v.

Potomac Concrete Co., Inc.,

Creative Landscapes by Gregory, et al.

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND
CIRCUIT COURT OF PRINCE GEORGE'S COUNTY

**PETITION FOR WRIT OF CERTIORARI
MOTION FOR RECONSIDERATION**

Adrienne Mallard
Petitioner, Pro Se
10482 Baltimore Avenue
Suite 104
Beltsville, MD 20705
877-855-2004

Adrienne Mallard, Petitioner, respectfully move pursuant to Maryland Code Courts & Judicial Proceeding 6-408, Motion for Reconsideration 8-605, that the Court recall its Mandate in the above captioned appeal, and reconsider its Per Curiam Order dated April 16, 2021. As grounds for Petition for Reconsideration, Petitioner states:

Rule 8-605 - Reconsideration, Md. R. Rev. Ct. App. & Spec. App. 8-605.

- (1) whether the Court's opinion or order did not address a material factual or legal matter raised in the lower court and argued by a party in its submission to the Court.*
- (3) whether the court's opinion determined the outcome of the appeal on an issue not raised in the briefs or proceedings below. (Opinion stated inaccuracies listed below).*
- (4) whether there is a significant consequence of the decision that was not addressed in the opinion.*
- (5) whether the motion or response is filed in the Court of Appeals, whether and how the Court's opinion or order is in material conflict with a decision of the United States Supreme Court or decision of the court of Appeals.*

When Trial Court Fractures known laws, it is Unconstitutional. Also, harming citizens lives denying Petitioner medicals and an equal trial.

Objected at trial, trial judge did not read jury instructions. Unpublished Opinion also erred stating Petitioner did not indicate. In fact, (page 9-(exb.14b)) Petitioners Response Brief to Creative Landscapes by Gregory specifically indicates judge did not read "Maryland Pattern of Jury

Instructions.” Petitioner did not state by verbatim. However, comprehensive appeal briefs detailed judge “conversation” with jurors (jury instructions) specifically cited in trial transcript, docketed in Court of Appeals of Maryland. Additionally, demonstrating judge influencing jurors throughout jury instruction and throughout trial. Being Pro Se, in the State of Maryland, stating “Jury Instructions” in briefs in reference to this State’s Maryland Pattern of “Jury Instructions,” should not be cause for additional harm to Petitioners Constitutional Due Process of the Laws/Rights to a Fair Trial. Although Petitioner did state “Maryland Pattern of Jury Instructions,” U. S. Supreme Court states pro se should not be held to the astringent level of writing as a licensed attorney, not holding pro se on a technical level. Petitioner argued and cited in several Briefs on appeal concerning “Jury Instructions” not read. Ordinarily, this case is a mistrial.

The U. S. Supreme Court – Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958) “... not complying with the oath of the Constitution of the United States... engages in acts in violation of the supreme law of the land.”

When trial transcripts (printed after trial) disclose Judicial Misconducts, it designates errors and prejudices by trial judge and/or clerk, creating a reversible offenses.

This case contains circumstances to consider hearing reversible errors, simply because conditions unknown or not apparent at trial are not able to be preserved. Trial example, the jurors returning from deliberation asking the Court three questions. Trial courts substantial violations of Maryland Rule 2-521 not docketing nor recording an entire court room event was not known until transcript was received after trial.

With the Trial Court informing Kevin Finnegan (previous attorney), of the jurors returning from deliberation to courtroom, and Finnegan coming to my family and I to inform us (we did not know if verdict or questions), this shows the first Part of Maryland Rule 2-521 was followed, informing us. Although, Trial Court didn't wait for me in court security lunch-time line, clearly indicates Trial Courts decision to not complete nor enforce Rule 2-521, by choosing not to docket or record the courtroom event. Trial Judge has the responsibility of a fair Trial. Trial Court errors elevates past the level of significant, with additional harm from the Court of Special Appeals of

Maryland not answering nor addressing Petitioners well-argued and detailed Brief questions on Trial Courts errors. This is Unconstitutional, raising significant and barriers and is destructive to my personal injuries, as well as to the Constitution's Due Process of the Laws.

Objected at trial, trial transcript (page #303-310) displaying the courtroom confusion from CLG Defense attorney Frank F. Daily discussing his evidence #3, #4 and possibly #5 without admitting them into evidence. Kevin Finnegan again Objected to Clerk not recording evidence. Frank Daily stated he will mark them during lunch break. Trial Judge seem to be fine with this rule violated as well. The Judge, both attorneys and witness (Gregory Harrison) were confused, not knowing the numbers of each piece of evidence from the Court Clerk not admitting into evidence and numbering them. No one knew what evidence was what.

S.C.R. 1795, *Penhallow v. Doane's Administraters* (3 U.S. 54; 1 L.Ed. 57; 3 Dall. 54), "The prosecutor is not a witness; and he should not be permitted to add to the record either by subtle or gross improprieties. Those who have experienced the full thrust of the power of government when leveled against them know that the only protection the citizen has is in the requirement for a fair trial."
<https://supreme.justia.com/cases/federal/us/3/54/>

Judge allowing Defense attorney to present unadmitted/unrecorded evidence at trial is Unconstitutional. Court Rules not followed, in my case. The 2nd time Trial Court Clerk did not Record or Docket. One of the many reversible offences.

US Supreme Court Nudd v. Burrows, 91 U.S 426. "Fraud vitiates everything."

When the Court of Special Appeals of Maryland Unreported Opinion unethically omits the Pro Se/Petitioner's questions argued in appeal Briefs concerning issues relating to our U.S. Constitution's 14th Amendment/Due Process of the Laws, directly harms and creates barricades involving Constitutional matters throughout Petitioner's appeal. This action also eradicates Petitioner's protection of the Courts, her born Constitutional Rights to a Fair/Equal Trial, clearly not providing her Equal Due Process of the Laws. The power of a Courts ability to dismissively omit well-argued questions related to trial court fracturing the U.S. Constitution and Judicial Misconducts escalates the Judicial Abuse started and prevalent during her personal injury trial.

Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938).

"Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment."

The following Petitioners Brief questions argued to the Court of Special Appeals of Maryland concerning Trial Courts errors violating her Constitutional Rights, omitted in Opinion, a reversible offense:

1. The Trial Court had two confessions by the Defendant Creative Landscapes by Gregory and explanation repairing step in deposition and trial. The 5 ½ page Opinion only had 1-paragraph on Creative Landscapes by Gregory and did not mention Color Contrast or Stair Rails argued heavily in my case in Trial Court and my Briefs. Disproportionately stating only riser height which was unethically thrown out creating a domino avalanche effect on several of my evidence proving neglect of code violations. Omitting the true essence of trial details distorts the case and mislead the facts and people who read this case. Opinion omitting Defendants 2 confessions, repairing step, only mentioning dismissed heights in 1-paragraph when Defendant was in the 3-Day Trial? This is Biased and Unconstitutional.

Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974) The U.S. Supreme Court stated, "...When a judge acts as a trespasser of the law... when a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution."

2. Opinion did not address Trial Court forgetting to Docket and Record returning jurors from deliberation. U.S. Court procedure not docketed

nor recorded is Unconstitutional, not affording Petitioner a fair trial.

3. The Opinion overlooked evidence of the 3-day trial and **Gregory**

Harrison, Ph.D., P.E. trial testimony and Affidavit, only citing his 9

words, stated riser height did not cause or contribute to fall. Ignoring

Defendant confessions and trial evidence.

Gregory Harrison, Ph.D., P.E. stated in Affidavit and at trial.

- "Defendants Potomac Concrete Company, Inc., which built the concrete step, and Defendant Creative Landscapes by Gregory, Inc., which installed a brick step, the walkway and walkway grading, violated both the LSC and IBC technical provisions..."

- "Defendants' breaches in the standards of care were the proximate cause or root cause of the injuries suffered by Ms. Mallard as a direct result of her fall."

- "I expect to testify that had the Defendants complied with the applicable standard that Ms. Mallard would not have been injured."

- "The Life Safety Code is the standard of care for Maryland State and it requires a handrail for a two-step location."

- The Code required that all risers and treads have a dimensional uniformity not greater than 3/16 inches..."

- "Subcontractors who performed the work to the concrete and brick steps, and the brick walkway, are responsible for public safety.

- "The non-conforming riser height was a material defect in the subject steps as discussed above and represented a danger to the Public at large."

Gregory Harrison, Ph.D., P.E. mentioned Defendants' (both) Creative

Landscapes by Gregory and Potomac Concrete, Co throughout. Harrison did not state in his July 25, 2018 Affidavit (nor could I find in trial transcript) riser height did not cause Plaintiff's fall.

NOTE: His Potomac Concrete deposition was on October 8, 2018, after their September 11, 2018 filed Summary Judgement for Reconsideration. Seems Opinion and Trial Judge dismissal was a mistake, as they still have no new facts. Harrison did state Defendant's causation-had it not been for both Defendants code violations the fall would have never occurred.

4. Opinion, page 4, incorrectly name Petitioner, not Kevin Finnegan, as if I were Pro Se at trial. Further stating "she "mentioning Finnegan stated opposed motion for reconsideration but did not dispute facts Potomac Concrete just said. Changing positions without my agreement. Opinion omitted Finnegan's immediate retractions stated twice, "I refer to my Briefs filed," arguing disputing material Facts filed on 4/18/18, 6/14/18, 7/22/18, 9/27/18, 10/22/18 up to just 7 days before trail.
5. Opinion omitted questions on deceptive (2nd) red brick step with same red-brick color/pattern as entire sidewalk attached to whit-cement stoop.

"Negligence is proximate cause of injury and consequence of negligent act or omission." Medina v. Meilhammer, 62 Md. App. 239, 247, 489 A.2d 35, 39 (1985) (E. p. 35) #6) codes)

6. Omitted, isn't it one unit when step and concrete porch are attached/built together? I cited,

"The truth of all credible evidence tending to sustain claim of negligence must be assumed and all favorable inferences of fact fairly deducible therefrom tending to establish negligence drawn." Kantor v. Ash, 215 Md. 285 (1958).

7. With Potomac Concrete white-cement stoop being the first step seen descending, if the inspector measures step, including up to the top concrete step, shouldn't both be responsible considering they are bonded together and 2 steps making one staircase? I cited.

"To establish negligence drawn." Kantor v. Ash, 215 Md. 285 (1958).

8. A fact, Defendants are to comply with all applicable building codes (E. 95 [32]), does this make Potomac Concrete liable and neglectful in taking part of building the dangerously deceptive uneven multicolored steps?

Material fact decided by the trier of fact - 6 - affecting the outcome of the case.

Mandl v. Bailey, 159 Md. App. 64, 82 (2004); also King v. Bankerd, 303 Md. 98 111 (1985)

9. Why did Potomac Concrete not pour cement on both porch and step at

the model home like they did with the entire community? I cited.

Negligence is proximate cause of injury and consequence of negligent act or omission. Medina v. Meilhammer, 62 Md. App. 239, 247, 489 A.2d 35, 39 (1985) (E. p. 35) #6) codes

Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958) Note: Any judge who does not comply with his oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason. The U.S. Supreme Court has stated that "no state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it". See also *In Re Sawyer, 124 U.S. 200 (188)*; *U.S. v. Will, 449 U.S. 200, 216, 101 S. Ct. 471, 66 L. Ed. 2d 392, 406 (1980)*; *Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5 L. Ed 257 (1821)*.
<https://www.constitutionallawgroup.us/files/constitutionalcaselaw.pdf>

When the Court of Special Appeals of Maryland Opinion seems to only protect the Defendants, creates and unbalanced and Unconstitutional judgment.

Trial Court did not docket nor record their trial court events, the Trial Court did not protect the Constitutional Rights of the Petitioner, nor did the Court of Special Appeals of Maryland Opinion ever protect or defend Petitioners Constitutional Rights just as the Opinion defended and excessively and exclusively supported both Defendants in its entirety. The Opinion never once reviled true case nor protected Plaintiff side or rights.

In the Court of Special Appeals of Maryland's 5 ½ page Opinion:

- 3-Pages protecting and supporting Defendant Potomac Concrete side.

- 1-Paragraph on Maryland Pattern Jury Instructions, not indicating my argument.
- 1-Paragraph on Creative Landscape by Gregory, the Defendant in the 3-Day Trial, nor included their confessing to color contrast violations & repairing step. Opinion should have more than 1-paragraph.

VII Civil Liability ... "Fraud destroys the validity of everything into which it enters," Nudd v. Burrows, 91 U.S 426. "Fraud vitiates everything" Boyce v. Grundy

The 14th Amendment of our U. S. Constitution state, citizens have a right to a fair trial.

Clearly state I have Constitutional rights. Accordingly, clearly stating Trial Courts errors violated Petitioners Constitutional Rights to a Fair and Equal Trial, without harm or biasness.

Petitioner Briefs argued her rights according to our U.S. Constitution. In this case, rights and court violations not acknowledged, causing a significant amount of consequences not having a fair trial, without bias, or appeal Opinion avoiding argued question, several rules violated in Trial Court and Opinion along with sharp disproportionate rulings.

By Court of Appeals unfairly omitting Petitioners rightful Brief questions arguing her Constitutional rights in every Brief on appeal, imposes

deliberate barricades on her appeal.

As Pro Se, not held to the same level of writing as licensed attorney, although rigorously argued, whether Petitioner indicated the title of Constitutional Rights violated (she did) or indicated the actions of her Constitutional Rights violated in arguments, our U. S. Constitution seem to state the actions, not title. A violative action is a violation and is Unconstitutional.

Case treatment is so rebellious and without acknowledgement. In my search for who protects citizens when Courts exclusively protects Defendants, I mainly find our U. S. Constitution protects Defendants (criminals) under the 4th, 5th & 6th Amendment to the Constitution, shielding them from abuse by the government. However, our government has an obligation to safeguard our citizens against violations/criminal activity. This case is unorthodox, only protecting the Defendants who are the direct cause of this case.

The case difficulties are the many Unconstitutional Court actions mounting over the original personal injury liability case. This is Judicial

Misconduct. Abuses case, citizens, and wars against the constitution.

"Fraud destroys the validity of everything into which it enters,"

Nudd v. Burrows, 91 U.S 426.

CONCLUSION

During this harmful four-year liability case, I followed many rules and remained polite in the face of constant disrespect. If this case had an audit on case evidence and how it relates to the outcome, it would have multiple causes for concern with action taken. Unfortunately, even with numerous supportive evidence, when Courts violate known Court Rules, for some people, mainly Blacks, there does not seem to be checks and balances when we file Civil cases, for protection asking the Court for help. I was not allowed to have a fair trial without bias, nor a verdict representative of the trial evidence. Defense confessions with repairing, and the Rule of law vanished a week before trial. Dreams of continuing my productive life in our community. Like my case, some of us are forced to keep repeating over and over again the already known fact -" I Have Constitutional Right, Too."

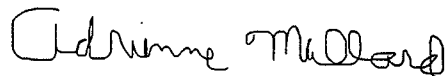
Leaving citizens whose life already violated by other citizens, to also carry the extra load and disbelief of Court disobeying known laws, piled on-top.

In reviewing evidence in this case for reconsideration of my petition, this Honorable Court of Appeals of Maryland should ask one question... In the case of Adrienne Mallard v. Potomac Concrete, Co. et (and Creative Landscapes by Gregory) case number 17-13531/3030/479, at any time, did the Trial Court and/or the Court of Special Appeals of Maryland act Unconstitutional, not in accordance with the U. S. Constitution?

For the foregoing reasons, the petition for rehearing should be granted.

Respectfully submitted,

Adrienne Mallard Petitioner, Pro Se



10482 Baltimore Avenue, Suite 104

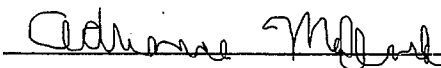
Beltsville, MD 20705

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AdrienneRealtor1@gmail.com

**CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH
THE MARYLAND RULES**

This filing was printed in 14-point Palantino Linotype font: complies with the font, line spacing, and margin requirements of Md. Rule 8-112; and contains 2788 words.



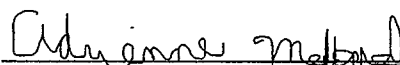
Adrienne Mallard Petitioner, Pro Se 10482 Baltimore Avenue Suite 104
Beltsville, MD 20705 877-855-2004 AdrienneRealtor1@gmail.com

CERTIFICATE OF SERVICE

I certify that on this day, May 3, 2021, a copy of the foregoing "Petition for Writ of Certiorari Motion for Reconsideration" was mailed by first-class U.S. Postal Service, postage prepaid, to:

Frank F. Daily, Esquire, 11350 McCormick Road, Executive Plaza III, Suite 704, Hunt Valley, MD 21031.

Robert B. Hetherington, Esquire, McCarthy Wilson, LLP, 2200 Research Blvd., Suite 500, Rockville, MD 20850.



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No. 479
September Term, 2020
CAL 17-3531

Court of Appeals of Maryland

Adrienne Mallard

Petitioner

v.

Potomac Concrete Co., Inc.,

Creative Landscapes by Gregory, et al.

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND
CIRCUIT COURT OF PRINCE GEORGE'S COUNTY

**PETITION FOR WRIT OF CERTIORARI
MOTION FOR RECONSIDERATION
SUPPLEMENT – OPINION - STEPS CAUSED INJURY**

Adrienne Mallard
Petitioner, Pro Se
10482 Baltimore Avenue
Suite 104
Beltsville, MD 20705
877-855-2004

Adrienne Mallard, Petitioner, respectfully move pursuant to Maryland Code Courts & Judicial Proceeding 6-408, Motion for Reconsideration 8-605, that the Court recall its Mandate in the above captioned appeal and reconsider its Per Curiam Order dated April 16, 2021.

As grounds for Reconsideration as set forth in Petitioners previous filed May 3, 2021 Motion for Reconsideration, Petitioner also respectfully submits this Supplement as further evidence proving both Respondents faulty constructions caused Petitioners injury, and Petitioner did not receive her U.S. Constitutional rights to a fair trial.

The attached Virginia Workers' Compensation Commission Opinion by Deputy Commissioner Plunkett Awards Petitioner based on the following rulings, affirming:

"While it is well settled that stairs are not an inherent risk of employment, we find that the preponderance of the evidence JCN VA00000934944 8 establishes that the pattern of the brick was a visual distraction such that the claimant was unable to assess the steps..."

"After careful consideration of the record evidence, we find that the conditions of the workplace caused the accident and injuries."

"While a portion of the cross-examination, focused on the fact that the

claimant had walked up the set of stairs at issue some minutes before she walked down them, we do not find that this alters the optical illusion that the claimant faced while descending the stairs. Upon this evidence, we find that the conditions of the workplace caused the accident and injuries."

Petitioner implores the honorable Court of Appeals of Maryland to reconsider Petition based on conflicts of rulings on causation/liability with my injuries, the massive supporting evidence, Judicial misconduct, and consider the full merits of this case:

- Unconstitutional trial court errors, deliberating juror's courtroom questions not docketed nor recorded.
- Unconstitutional dismantlement of Petitioners relevant evidence in a staircase trial involving only 2 steps, reduced to only 1 step at trial.
- Unconstitutional, trial Judge not reading Maryland Jury Instructions.
- Unconstitutional Court of Special Appeals of Maryland Opinion not addressing material facts, omitted Constitutional legal matter raised in the lower court fully argued in Petitioners briefs.
- Significant consequences of Opinion not addressing issues set forth in trial courts Judicial errors, Unconstitutionally removed Petitioner Rights to equal Due Process of the Laws and a Fair Trial.
- Court's opinion and trial court verdict in material conflict with decision of the United States Supreme Court and prior Court of Appeals decisions.

Furthermore, this Supplement provides another Courts Opinion implicating the cause of Petitioners fall/Life-Long injuries are the dangerous optical-illusion steps constructed by both liable Respondents.

The fact the Commission realizes that steps are not looked at as a risk of employment, but nevertheless the Deputy Commissioner acknowledges in my case the conditions of Respondents steps created the risk of employment is highly significant and should be assessed in reconsideration.

The preponderance of evidence from both the Virginia Deputy Commissioner's Opinion under *Finding of Facts and Rulings of Law* (citing cases), along with the Maryland trial court record obtaining additional supportive Petitioners evidence (detailed code violations/depositions/expert witness trial testimony/Briefs/Picture of steps & measurements/Respondents admitting to 2 code violations-color contrast and height/Respondents admitting to repairing steps...), most unlawfully dismantled by trial judge, along with Unconstitutional trial court Judicial Misconducts, proving it was impossible for Petitioner to have a fair Constitutional trial.

This Supplement further proves why both steps should have been the same color and supports this Maryland case record on color code violations. Both Respondents different colored steps, textures, height, and pattern created an optical illusion. The Deputy Commissioners Opinion mentions

optical illusion stated by doctors, workers comp defense, employer, physical therapist...

For the Constitutional errors needing authoritative corrections set forth in Petitioners Motion for Reconsideration, and this Supplement filing on conflicting rulings, the petition for reconsideration should be granted.

Respectfully submitted,

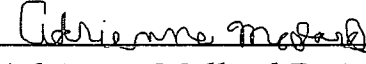
Adrienne Mallard
Adrienne Mallard Petitioner, Pro Se
10482 Baltimore Avenue, Suite 104
Beltsville, MD 20705
877-855-2004
AdrienneRealtor1@gmail.com

CERTIFICATE OF SERVICE

I certify that on this day, May 17, 2021 a copy of the foregoing "Petition for Writ of Certiorari Motion for Reconsideration" was mailed by first-class U.S. Postal Service, postage prepaid, to:

Frank F. Daily, Esquire, 11350 McCormick Road, Executive Plaza III, Suite 704, Hunt Valley, MD 21031.

Robert B. Hetherington, Esquire, McCarthy Wilson, LLP, 2200 Research Blvd., Suite 500, Rockville, MD 20850.


Adrienne Mallard Petitioner, Pro Se
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PL

AFFIDAVIT **RECEIVED**

MAY 01 2020

September Term 2018

BY COURT OF SPECIAL APPEALS

No. 3030

State of Maryland

County of Prince Georges County

I, Adrienne Mallard hereby affirm on October 31, 2018, the last day of my three-day trial (Adrienne Mallard v. Potomac Concrete Co., et al.), a court proceeding concerning JURY QUESTIONS took place in the Prince Georges County Circuit Court of Maryland of which no recording can be found, not on the record, not entered on docket, nor exist in the court transcript.

Maryland Rule 2-521 (d) Communication With Jury.

(2) Duty of Judge.

(A) Court official receives communication from jury immediately notifies judge.

(C) ...judge shall promptly (before responding) direct parties to be notified of the communication and invite and consider, on the record, the parties' position on any response.

(3) Duty of Clerk.

(A) Clerk shall enter on the docket (i) date and time of each communication from jury received or reported to judge, (ii) whether written or oral, nature of communication, (iii) whether judge concluded communication pertained to action, (iv) whether parties and attorneys were notified and had opportunity on the record to state position on any response.

(B) Clerk shall enter electronically or paper file each written communication from the jury or a juror and each written response by the judge.

During jury deliberation, my family (mom, dad, son) and I were in the same restaurant (next to courthouse) as my then attorney (Kevin Finnegan) and his two partners. Totaling seven (7) of us from my trial. Mr. Finnegan advised my family and I; we all need to head back to courtroom because the jurors returned. Mr. Finnegan and two partners left shortly before we did.

As my family and I walked up to courtroom door (after long security line/lunch time), Mr. Finnegan walks out. We asked what happened? He informs all four of us the jurors just had three questions. 1. What type of shoes did I have on? 2. Why did I wait long to file case? 3. Why did defense find out late? We asked, what did judge James Lombardi say? Mr. Finnegan informed, judge told jurors they have all the information and to get back in and make a decision. My family and I expressed our disgust not being in court proceeding, knowing we were on our way and the questions were directed to me and were not answered. Why not wait just 10 min.


for the claimant in security line, when court waited for a nonresponsive juror from 9:00 am – 10:45 am?

Along with troubling documented issues obstructing a fair trial, due process of law and my equal legal rights as a Prince Georges County citizen (homeowner), my family and I were not afforded the opportunity to be in courtroom during the Jury Questions for my own trial. Concerning MY LIFE. We also do not have a record of what transpired, what was said, the tone carried and if other persuasions took place. Seemingly, from Clerk not docketing Jury Questions and the proceedings as listed in the Maryland Rule Duty of the Clerk 2-5213(A),(B).

Note: Prior to me receiving the transcript, I documented not being allowed to be present during the Jury Questions in my 2018 MOTION FOR SUMMARY JUDGEMENT NOTWITHSTANDING THE VERDICT / MOTION FOR NEW TRIAL filed in the Prince Georges Circuit Court of Maryland, in both my first Brief and corrected Brief filed in the Court of Appeals of Maryland. After receiving transcript on or about September 21, 2019. I made note as well in my corrected Brief and Response Brief filed in Court of Appeals of Maryland.

All parties in courtroom involved in my trial would have witness and/or had knowledge of the jury questions. Including seven of us at the same restaurant Mr. Finnegan, his two partners, my mother, my father, my son and myself. We all left the restaurant around the same time to return to the courtroom from being notified of the Jury Communication.

Date is the 22 day of April, 2020


Signature of Affiant

SWORN to subscribe before me, this 22nd day April, 2020

My Commission Expires:



SEONG HEE SHIN
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires Sept. 24, 2023
Montgomery County

6-2
No. 3030, September Term, 2018

COURT OF SPECIAL APPEALS OF MARYLAND

Adrienne Brown-Mallard

v.

Potomac Concrete Company, Inc. et al

CERTIFICATE OF SERVICE

I certify, that on June 3, 2020, I served a copy of this Affidavit to Potomac Concrete Company, Inc. through their attorney, Robert Hetherington, McCarthy Wilson LLP, 2200 Research Boulevard, Suite 500, Rockville, MD 20850; as well as to Creative Landscapes, Inc., through their attorney The Law Offices of Frank F. Daily, P.A., Executive Plaza III, 11350 McCormick Road, Suite 704, Hunt Valley, MD 21031. According to Maryland Rule 1-323.


Adrienne Mallard

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND
CIVIL DIVISION

ADRIENNE MALLARD
13913 Concord Avenue
Laurel, MD 20707

Plaintiff,

V.

POTOMAC CONCRETE CO., INC.
8780 Virginia Meadows Drive
Manassas, VA 20109

and

CREATIVE LANDSCAPES BY GREGORY, INC
6126 Jefferson Pike
Frederick, MD 21703-7044

Mailed to Resident Agent
Gregory J. Kenel
1441 Silo Way
Silver Spring, MD 20905

Defendants.

CASE NO.: CAL 17-13531

MOTION FOR A NEW TRIAL

Plaintiff's Motion for Summary Judgment Notwithstanding the Verdict.

Plaintiff, Adrienne Mallard (hereinafter "Plaintiff" or "I" or "my"), hereby kindly
requests that the Court grant judgment notwithstanding the jury's verdict and grant a

new trial. Moreover, Plaintiff implores the Court to enter judgment on this issue in favor of the Plaintiff, based on the following trial facts:

An unjust and improper verdict. Trial Evidence proved Defense multiple code violations, displaying no reasonable care, being dismissive on safety measures and ignoring responsibility. Henceforth, the inadequate deceptive steps caused Plaintiff fall, creating Life-Long injuries and greatly reduced her quality of life.

The defendants are in violation of multiple codes, including the Life Safety Code (standard of Care for Maryland State) which require handrails since 1997 / strong color contrast / correct Thread Depth measurements / unified Riser Depth. Lacking in all. Absolutely, No evidence of Plaintiff's burden. Defense could not find, confirm, nor prove any Plaintiff's cause throughout entire trial.

The Maryland Code also indicates a stair rail to be placed at a place of business/office. Which Plaintiff's evidently proved in Court. Both buildings were offices, having office desk, conference table, computer, brochures, guess intake card, printer/fax, greeting area and office phone. Office also had a display of home options (flooring, siding, cabinetry...) to be purchased by customers, along with the home.

Plaintiff's expert witness Gregory Harrison, Ph.D., P.E., testified at trial in Court of the Defenses many Maryland Code Violations for stair risers, strong color contrast, deceptive steps, thread depth, missing handrails, among other items.

Defense testified in Court they were to build up the foundation (landing area) to code level, not build a step. Defense put an improper misleading brick step, with uneven stair riser height. Creating a danger to the public.

Both Creative Landscapes by Gregory, Inc. and Potomac Concrete Co., Inc., (Defendants) displayed multiple code violations and are entirely at fault for constructing dangerously deceptive steps. Both failed to exercise reasonable care, failed to properly construct stairway, failed to properly inspect for safety and code violations after the completion of project. Of which both share the duty to do so. Both the platform and steps create one stair case, and neither company measured the finish product to make sure they were both in compliance with Maryland Code. Nor, followed Code requiring strong color contrast, or include a handrail for the office steps.

- 1) I was informed by my attorney Keven Finnegan, that Judge James J. Lombardi did not read the Maryland Pattern Jury Instructions, providing wrong jury instructions. My attorney Objected at trial. A family member was disturbed the Judge instructed juror's, if they say no to number one, then knock on his door, it is over, you can go home. Of course, this was on Halloween and a jury of Six (Five Women, I am as well) possibly looking forward to trick or treating with family and feeling rushed again.
- 2) Two of the six jurors were sleep during Plaintiff's testimony at trial. One seemed extremely upset fussing out loud walking by us to jury seating, many seemed entirely

unconcerned, yet making an important and very serious decision concerning Plaintiff's life, who waited Four and a Half years for a fair trial and justice for multiple Life-Long injuries. Plaintiff's life prior to multiple injuries is no more. The improper verdict is unjust.

3) Facts on the Defense multiple violations proven throughout the trial...

- a. Adding a **slanted brick step**. Not to Code.
- b. Not **building foundation** to Code as instructed by Defense office/Forman.
- c. Deceptive steps. Violating Means of Egress/Change of Elevation paragraph in IBC and LSC Code, not having a strong **color contrast** on upper and lower steps.
- d. Admitted **did not measure** after completed project, checking for Code violations.
- e. Violated Life Standard Code **neglecting to install a handrail** for small elevations.
- f. **Risers not uniformed**, One-inch difference, Code allowing 3/8-inch difference.

One step measured 5 inches, the other measuring 6 inches.
- g. Concrete platform Violated Code having an **Eleven-inch thread** and **not** the required **Thirteen Inch Thread** Depth for two steps.
- h. Admitting to fault at trial - Defense **attempted to repair** the risers in 2017...

4) Was Potomac Concrete unjustly removed just moments before trial? A month prior to trial, Potomac Concrete Motioned to the Court to be dismissed. Court denied their Motion. The concrete platform is connected and part of steps, creating one staircase,

sharing safety responsibility / duty to measure final product for any Maryland Code violations. Neither did. Had Potomac Concrete inspected the final product, they would have known another concrete step should have been in place, not the one brick step. The entire Brickyard Community has white concrete upper platform, white concrete steps and white concrete sidewalk. Not like the office with a white concrete upper platform, one deceptive uneven brick step with same color and pattern bleeding into the entire landing area. Had both defendants place required Handrail on concrete platform, steps and landing, Plaintiff's multiple Life-Long injuries, constant daily pain, cramping and drastic change of life would have been prevented.

- 5) Was the violation of stair riser measurements unjustly removed moments before trial? Measurements are a major part of Plaintiff's case, proving to the jury defense had more Maryland code violations with risers being One-inch difference in height. Also proving another neglect in care for public safety. Neither defendant inspected for public safety.

Plaintiff states facts as follows:

After locking up at Brickyard Station community at 12511 Brickyard Boulevard. I looked down at the steps and proceeded (as stated in my depositions and testimony in your Court). I fell down negligently constructed deceptive steps that violated the Life Safety Code and were not even build in compliance with applicable Maryland codes.

Stairs are still defective and unsafe as proven at trial, creating a dangerously visual deceptive view when descending steps.

I broke my lower left leg, ankle and foot, having multiple fractures spiraling around my leg twice and entirely through my ankle. Ankle barely holding together. I heard my bones Pop and Crack about four or five times. Nurse at hospital said, good thing I had on flats, had I had my dress shoes on, my bones would have broken through my skin. I was in a cast for Four months, no weight bearing for almost two months! Even told to get back in boot cast twice. Physical Therapy off/on for Four years. Recently told to return because of 5% range of motion in left ankle and pain management.

Some of my injuries from medical records... Fracture of Lateral Malleolus-Left / Fracture of Ankle Oblique Distal Fibular-Left / Foot Fracture-Left / CRPS Stage II (Chronic Regional Pain Syndrome) lower leg, ankle and foot / Tibialis Posterior Tendinitis Stage II / Ruptured Achilles Tendon / Sever Right Ankle Sprain / Osteopenia Bilateral Malleolus & Foot / Contracture of Ankle Joints / Plantar Fasciitis / Hip Greater Trochanter / Major Depression / Anxiety / Agoraphobia / Chondromalacia Patellae (Knee) / Peripheral and Sural Nerve-Left & Right / Carpal Tunnel Syndrome-Left & Right... Because of my injuries, I lost two jobs - a license job since 2007, and my (at time) new Full-Time Hours. Almost lost my home I've own for 21 years four times since injury. Since graduating from college in 1990, I generally held two jobs at a time.

My case is purely on truth, facts, honesty, Maryland law code and Four and a half years of concrete medical evidence. Never having any prior injuries.

I was excited, waiting a long time for trial week. With great respect to the Court, I was disappointed sitting in harshly cramped quarters, behind my attorneys (not at table presenting myself to Judge and jury) for Six-hour days during the Three-day trial. Injured and in pain, legs/ankles cramping. Trial pressured to rush though once jury arrived, their first impression. First day, I felt like my case / my life was not even realized. I have Life-Long injuries from Defendants many proven negligence.

The verdict was unjustly unfair. If this verdict remains, other Defense attorneys will unfortunately use this case against many other innocent suffering injured victims (like myself) as a precedence. To cheat Plaintiff's out of their future medical, lost income, pain and suffering. This is Unmerited.

Conclusion: For the foregoing reasons, Plaintiff requests that this Court enter judgment in favor of the Plaintiff and order a new trial on Plaintiff's damages. Alternatively, Plaintiff requests a new trial.

Adrienne Mallard

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document was sent
electronically by email, as well as mailed to:

Info@FrankDailyLaw.com

Frank F. Daily, P. A.

Executive Plaza III

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Hunt Valley, Maryland 21031

410-584-9443

On the 7th day of November 2018

Adrienne Mallard

**IN THE
COURT OF SPECIAL APPEALS OF MARYLAND**

September Term, 2018
No. 3030

ADRIENNE MALLARD

Appellant

v.

POTOMAC CONCRETE CO. INC.

CREATIVE LANDSCAPES BY GREGORY

Appellee

Appeal from the Circuit Court for Prince Georges County

RESPONSE TO APPELLEE CREATIVE LANDSCAPES BY GREGORY BRIEF

Adrienne Mallard
13913 Concord Avenue
Laurel, MD 20707

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**APPELLANT ADRIENNE MALLARD RESPONSE TO APPELLEES
CREATIVE LANDSCAPES BY GREGORY, INC. BRIEF**

STATEMENT OF THE CASE

This case arises out of faulty psychedelic steps built by both Creative Landscapes by Gregory, Inc. (CLGregory) and Potomac Concrete, Inc. (PotomacC). Injuries took place in Prince Georges County and trial was held in the Circuit Court for Prince George's County, Maryland.

This liability case displays evidence of the defense admitting to their wrongful errors, new home builder instructed Creative Landscape by Gregory to fix steps after learning of my fall, CLGregory acknowledged there was a problem with height distance while at injury site, CLGregory did a repair on the steps (APX 1- ; E 123; TS p. 15), both contractors (CLGregory and PotomacC) failure to communicate with each other on safety codes/color contrast/heights, both failed to effectively manage safety of the project, both failed to inspect final project and both failed to adhere to the guidelines of safety codes including International Residential Code (IRC), International Builder Code (IBC) (E. 166), Life Safety Code (LSC) (E. 171-173) Standard of care for Maryland State which require Stair Rails for place of business/offices since 1997 (injured at office)/strong color contrast/correct

Thread Depth measurements/Unified Riser Depth (lacking in all), Maryland Fire Prevention Code (E. 168-169). Both CLGregory and PotomacC multiple wrongs created knowingly hazardous steps, as a result caused my numerous Life-Long injuries and disabilities, loss of two jobs and hindered my business. My life flipped inside-out and then shredded it.

STATEMENT OF FACTS

CLGregory and PotomacC are liability for building dangerously, defective, uneven, psychedelic, code violated, unsafe steps.

CLGregory and PotomacC **wrong**s, created deceptively dangerous steps for the public and myself, **caused** my Life-Long **Injuries** (20+), disabilities, loss of 2 jobs and affected my business and greatly reduced my quality of life.

In response to CLGregory's brief.

Creative Landscape by Gregory "Admission of Guilt"

CLGregory claims they made no admission to guilt. However, Trial and deposition evidence proves CLGregory admitted to their wrong doings more than once. As my dad keeps saying, "You do not have to repair something that's not broken... unbelievable"

As stated in the July 12, 2018 testimony / deposition of Steven Kenel,
Corporate Designee from CLGregory. (APX 1 p. 5, E. 6)

A Oscar Lopez is the landscape foreman who was on the job when we were informed about someone had fallen... June 2017.

(Transcript also details Kenel called Oscar to inform. Oscar was already informed by the Site Superintendent Mark Dick).

A I wanted him to go and find out what the problem was.

Q And who did you expect him to ask?

A Mark Dick

Q Did he ever find anything out from Mark Dick?

A Yes.

Q And what did he learn, do you know?

A That there was a problem with the steps. There was a slight deviation in the distance.

Q You mean the riser step height?

A Yes.

Q Do you know what that deviation was?

A From what he told me it was a total of three quarter of an inch.

Q That's based on his measurements?

A Yes.

Q Have you ever measured it?

A Yes

Q Can you tell me what your measurements were?

A Right now they are six inches and five and three quarters.

Q And you say "right now." Have these steps been changed or fixed or repaired in any way?

A Yes... I said Yes.

Q Do you know when that occurred?

A I don't remember that date but June 2017, the day we were notified.

(Transcript details how Oscar repaired steps, lowering an area).

A Where the walkway meets the step in front of the landing of the walkway.

(This is the location where I fell. Where the Red-Brick step blended into the Red-Brick sidewalk having same color and pattern, coming off of the First step being White-Concrete. Two totally different colored steps).

Q Have you ever had a conversation with Jason Thomas from CalAtlantic about the riser height issue in front of 12511 Brick Yard Boulevard?

A **Only the day he called me and said there's a problem. We need to fix it.**

Clearly, after CLGregory receiving word of my injuries from their point of contact at Cal Atlantic Builders (previously Ryland Homes) and was instructed to "FIX IT," Kenel from CLGregory wanted Oscar to go out to the injury site to find out what the problem was... just worried about making it right. Mark Dick informed Oscar that there was a problem with the steps riser height. Kenel stated Oscar did a repair of the steps by bringing the top of the stoop, top of the step into compliance with the top of the step of the walkway. Admitting steps were not in compliance with the code. The codes require no more than a 3/8 of a difference (less than a 1/2 inch). The difference was an entire inch. (E. 174, 175).

CLGregory then repaired the steps and made corrections (after my injuries) to be more uniformed with the code.

Q So what did his fix or repair do?

A It brought this distance... distance from the top of the stoop to the top of the step into **compliance** with the top of the step to the walkway.

Addressing the issue of CLGregory admission to their wrongdoing, leads to the importance for this case to keep the "RISER HEIGHTS" issue, simply because the code violated riser height steps, including the very low

RED-BRICK-STEP. Being one of the multitudes of Appellee's errors that caused my horrific fall. Also, how can there be a trial on faulty steps without discussing step risers and measurements? This is partly why the rest of the case was unorthodox because:

1. Both steps by both Appellees created the trickery color contrast issue.
2. Each step has a different color.
 - a. PotomacC poured the WHITE-CONCRETE PORCH.
 - b. CLGregory threw in the RED-BRICK STEP.
 - c. Both bonded together to create the "STEPS"
 - d. Both steps have separate colors, each creating the deception.
3. Each step also has different heights.
 - a. PotomacC WHITE- CEMENT PORCH measured at 6-INCHES.
 - b. CLGregory RED- BRICK STEP measured at 5-INCHES.
4. Both steps collectively create a danger to the public.
5. Both steps collectively violate several required codes.

Steps cannot be built without risers. Constructing steps includes measurements... of risers.

Consequently, as evident when the Trial Court removed PotomacC, they then reduce and removed relevant Court evidence, as well as nearly eliminating my entire case. What started as very strong case with a lot of supporting evidence, ended up with ONE step, reduced evidence and three days of dodging around the word stair risers/measurements. This case is on STEPS!

Issues Removed Causing an Unfair Trial.

1. **Color Contrast Violation** (created by both Appellees, needs at least two steps).
2. **Stair Risers Violation** (needs at least two steps).
3. **Code Measurement Requirements** (needs at least two steps).
4. **Stair Safety Rails**, diminishes the neglect and liability argument in Court to jurors and required for businesses (needs at least two steps).
Building steps with code violations (E. 147-155).

Not mentioning measurements when litigating neglected and dangerous steps with different risers measurements and different colored steps is nearly impossible when you take away one of the steps. Although, I still had a very strong case because the evidence still supported my side and both Appellees had multiple errors proving neglect. Nevertheless, unfair to claim discriminatory evidence when it is clearly relevant connects evidence.

A comparison of all steps, in this case the other step is needed in order to weigh the evidence properly. And show jurors all the neglect to clearly understand. Was it fair for the jurors not to know all the layering violations, evidence as to how the combinations of neglect from both Appellee's contributed in creating the dangerous psychedelic steps?

Case is on liability of faulty steps (plural), numerous neglects (plural).
We were forced to deliberate faulty steps and code violations with just half

of the Defendants, ONE Step and half of the applicable evidence snatched away.

387 On page (Ex. E p. 492) at Trial during Defense closing arguments, Defense attorney switched a statement I said around eliminating the fact that I looked down and stepped down on the first step (which proves I looked and used care for myself). He stated, "she talked about straight ahead, not looking down." This statement is not true amongst others on page. He attempted that during my trial testimony, and I corrected him. (Ex. E p 387) We read my deposition which clearly stated I looked down first then proceeded to walk. Now with about three of the jurors sleeping (I was facing them while testifying) they may have relied on Defense counsel statement that was not exact for their verdict decision. I don't recall attorney's taking oaths to tell the truth as well in court. That would be nice to prevent this.

Trial Judge Did Not Read the Maryland Pattern Jury Instructions

Defense mentions my then counsels Objection at trial. Afterwards, I also noticed the Defense counsel states on (E. p. 459) that he is concern the Trial Judge described his client as the CORPORATION rather than the DEFENDANT. The Trial Judge replies he did that for a reason because he did not want "them" to discriminate. What does that mean? Also, after

three days of unfavorable looks, why wasn't that afforded some type of acknowledgment.

As I previously mentioned in my November 7, 2018 MOTION FOR NEW TRIAL, my trial attorney informed me the Trial Judge did not read the Maryland Pattern Jury Instructions and provided wrong jury instructions, and he Objected at trial. Disturbingly, the trial Judge did tell them if they say no to number one, then knock on his door, it is over, you can go home. Unfairly enticing and persuasive, may have influenced an improper verdict.

An error occurred when the Trial Judge did not read the jury instruction. Kevin and I discussed what was said and it was not as light as CLGregory attorneys interpret it to be. I refer to my September 4, 2019 brief page 30. I mentioned the Trial Judge informed the jurors if you just say no to first question, you can go home... Very enticing and persuasive to the jurors.

Jury Questions

Appellee CLGregory again diminishes the fact of the severity of the issue of me not being in the court room. Two of the questions were directed at me. What type of shoes did I have on, and why did I wait so long to file the case?

My question is where are the transcripts for this part of the trial I had to pay for, by liquidating what was left from my retirement fund to pay for the transcript. I would like the audio. You can not even fathom how I feel after seeing all of this. I truly have a respect for the Court, my Libra scales would not have it any other way, but I am extremely hurt and devastated beyond imagination. Just numb.

I do not know why Court proceeded when my attorney clearly knew my family and I also rushed out of the very same restaurant they were in. He told us jurors returned. We all left near the same time. I didn't know I could have informed security jurors returned to get through security quicker. However, I clearly stated in my brief on page 17 and 18 the damage this caused, not being able to answer their question. Jurors did not receive an answer and were instructed to go back and make a decision. Questions asked were important to answer. They asked me direct questions. Why didn't Court just wait for me just 5/10 more min like we waited for the unresponsive late juror from 9:00 am to about 10:50 am? I'm just not understanding why all the friction in Court. This is and has affected my entire LIFE. I am a citizen as well, who worked very hard our community in real estate as well as students going to college.

I was not afforded the opportunity to be in the Courtroom to help answer. Before we got upstairs, Judge Lombardi rushed through the questions and told jurors you have all the evidence, go back and make a decision. I would insert Exhibit from transcript, but I don't know who has it. My attorney informed us as we were walking in the courtroom door. To my knowledge, none were answered. Jurors three questions were irrelevant question, not pertained to the Law, Jury Instructions or Trial evidence. Not a fair trial. What shoes did I have on (flats, dress shoes under office desk), why did I wait so long to file (pain/over 100 doctor appointments/home of 20 years in foreclosure), why defense didn't know about injuries after a while (?). Seems they overlooked three days of evidence with numerous proven Defense neglect, code violations and problems with the steps, yet still wanted to look for a reason with me outside of evidence. It also seems possibly from their expressions the Defense noticed it observing the second day and may be the reason the Defense gave up an entire 3rd trial day of scheduled witnesses to testify. This was my only trial I've been in. Never hear of Defense calling off all the witness testimony at Trial, their defense. Just doesn't seem right.

Jurors question have proven jury bias. Questions were not on evidence, law or instructions.

Did Trial Court Err in "Motion for New Trial/Motion for Summary Judgment Notwithstanding the Verdict?"

My appeal is based on the overwhelming amount of supportive case evidence for my case, the Defense numerous amounts of neglectful acts causing my Life-Time injuries and drastic change of life, the Defense clearly admitting to guilt more than once, Defense repairing the code violated step, no error on my end, seemed to be jury and its uncomfortable to say Judge bias, what seems to be a lot going on behind the scenes and my effort to protect other innocent injured people who's cases could be torn apart by excluding relevant evidence and other Defense using this case as a precedent harming them for the rest of their life and not able to get the medical treatment, loss of jobs...

ARGUMENT

India M.c Mehta v Union of india 1987

Strict Liability: Absolute legal responsibility for an injury that can be imposed on the wrongdoer without proof of carelessness or fault. Also called Absolute Liability, the legal responsibility for damages, or injury even if the person found strictly liable was not at fault or negligent.

CLGregory and PotomacC are both negligent for failing their duty of care, inspecting the final project not just an inspection of an incomplete harmful steps with a 14 inch drop-down, *Rylands v/s Fletcher 1868..* Liability

recognized even if the defendant did not intentionally cause the harm or was careful, they could still be made liable under the rule. In this case, the contractors failed to observe the old shafts under the reservoir and did not block them causing the water to breach the shafts and flood Plaintiffs coal mines on adjoining land. The Defendants did not know of the shaft and had not been negligent (in *Rylands v Fletcher* case), although the independent contractor had been. Even though the Defendant had not been negligent, the Defendant was held liable. Proving Potomac is liable in both scenarios and Potomac should be held accountable for their liabilities.

Maryland's Court of Special Appeals Holds Evidence of a Non-Party's Negligence Should Be Admitted When a Defendant Denies All Liability. *Martinez et al. v. The Johns Hopkins Hospital*, Case No. 1394 (Maryland Court of Special Appeals. The Court reviewed case law from other jurisdictions and held that evidence of negligence and causation attributable to a non-party is relevant when the defendant... asserts a complete denial of liability. Therefore, the Court found that evidence ... breach of that standard of care were relevant and should have been admitted, so the jury could determine fault.

Decision can be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* At 1098. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401, 91 S.Ct. 1420 (1971).

Creative Landscape by Gregory is liable in its entirety. *Md. R. 5-401*. The trial court's decision must be reversed if it was not legally correct.

- 1.) Defense admitted to fixing the steps after news of my fall/injuries. (E. 136).
- 2.) Defense admitted steps were an inch difference in height.
- 3.) Defense admitted office instructed them to build ground up to code not build a step.
- 4.) Defense admitted did not measure after completed project, check for code violations.
- 5.) Violated Life Standard Code neglecting to install a handrail for smaller
- 6.) elevations as testified by the Expert Engineer at Trial. (E. 170).
- 7.) Risers not uniformed, One-inch difference, code allowing 3/8-inch difference. Creative Step measuring 5-inches. Potomac Concrete step measuring 6-inches.
- 8.) Both Red Brick Step and White Concrete porch are attached / bonded together. Both liable.
- 9.) Among others noted in filings, depositions and Trial testimonies.

Both Defense displayed poor judgment, planning and lack of care for those walking on their misleading, unusual two separate colored steps. The last red brick step blends into the entire red brick sidewalk having the same color and pattern is utterly unfair and Dangerous. I'm 52 years old and can't recall ever seeing each step with a different always same color steps.

The picture of each step with measuring stick proves risers were an entire one-inch difference in heights and slanted/uneven. (E. 42 and E.43).

Defense witness Michael Karhumaa, who works for Prince George's County Department of Permits, Inspections and Enforcement agreed Prince George's County has adopted the International Building Code as it relates to business (E 45. P 430). He agreed at trial, if you want to install a step, you must install at least one handrail (E 45. P 432). He also agreed the code applies for commercial and businesses.

Many people have gone into a new home development and gone into the model home and have walked into an office mostly in the garage, having a desk, computer, copier, fax, marketing materials... (E. 45. P 335-336). It is a heavily traveled model home office, especially throughout the weekend conducting real estate business transactions through to settlement, also done in the office. Not some home office, which is why the International Builder Code (IBC) (E. 45. P 431, and trial exhibit #17) is appropriate for having handrails.

Did Defense Counsel Persuade Jurors with Inaccurate Statements?

During closing statements, defense attorney Mr. Daily seemed to persuade the jurors away from the trial evidence (E. 45. P. 492), he said I testified I was not in a rush (going home) he then tells jurors he thinks on a Friday I would be. His thoughts, not evidence. Also, inaccurately informing

jurors (E. 45. p. 492), asked how was I looking (don't recall question) he misinformed jurors stating I said straight ahead when I testified I looked down and stepped down on 1st step. Mr. Daily read my testimony I looked down and stepped down on 1st step (E. 45. P 387). Also, seeming to mislead my character to the jurors with he couldn't get a straight answer out of me (days worked at location). I did not know from working sporadically at multiple locations. I have been entirely transparent and entirely honest throughout. With some jurors sleep during my testimony possible some may rely on defense closing arguments for facts. Defense mislead the jurors in closing argument right before deliberation. Not accurate.

Conclusion

NEGLIGENCE

Is a failure to exercise appropriate and or ethical ruled care expected to be exercised amongst specified circumstances. The area of tort law known as *negligence* involves harm caused by failing to act as a form of *carelessness* possibly with extenuating circumstances.

DUTY OF CARE

Appellee's Collectively violated, building a white concrete porch that steps down to a red brick patterned step, that blends into the entire red brick

patterned sidewalk creating a look of no second step for everyday people to walk on. We are all owed Duty of Care and Duty of Safety to the public.

BREACH OF DUTY

Appellee's collectively exposed Appellant (and public) to substantial risk of loss. Materially increased the risk of harm through their code violations, trickery design, two different colors, uneven, improper grading, leaving a 14-inch drop-down for the public, not even measuring for safety... A combination of neglect for care. Had it not been for their neglect, I would not have fallen and suffering a Lifetime of injuries with disabilities. Undisputed, with this many errors, Appellee's must have been able to foresee the public danger.

CAUSATION

1. Appellee's combined carelessness and negligence in improperly building the deceptive steps having code violations.
2. Appellee's created a trickery Optical illusion, red brick sidewalk and design pattern bleeding in with lower step pattern (red brick) with a white concrete porch step one-inch difference in height.
3. As a result, caused my fall, multiple fractures, multiple Life-Long nerve damages, several ligaments and tendon issues, depression,

anxiety and agoraphobia.

This case has a lot of substantial issues from unfairly removing relevant exhibits, unfairly dismantling my case at beginning of Trial leaving us with no time to prepare with all changes. The removal of one Defendant/one step, in turns diminishes issues of code violated stair risers heights (need two steps), which Trial Judge removed beginning of Trial, which diminishes issue of color contrast (need two steps to) not able to compare to the unfairly removed step, which diminishes the issue of safety stair rails (need 2 steps), which diminishes the issue of all of Appellees dangerous neglects. Among others listed in this response, my briefs and other responses, are all reasons this case did not have a fair trial and did not seem to care a human's life was in the middle suffering from multiple injuries.

I even had to be taught how to walk all over again like a toddler from being in cast/crutches for over FOUR MONTHS. Now have to see all of this while I suffer Depression, Anxiety, Agoraphobia, over 20 injuries, Life-Long Disabilities and lost 2 jobs from restrictions and disabilities.

I kindly ask the Court of Special Appeals of Maryland to enter a judgement reversing the Circuit Courts verdict in favor of the Plaintiff, and

the matter be remanded to the Circuit Court to hold a hearing on Plaintiffs damages.

Respectfully submitted,

Adrienne Mallard

Adrienne Mallard

Statement as to Typeface: The font used is this Brief is Book Antique font and the type size is 14 point.

CERTIFICATION OF WORD COUNT AND COMPLIANCE

WITH RULE 8-112

1. This brief contains 3799 words, excluding the parts of the brief exempted from the word count Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

Adrienne Mallard

Signature

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 31st of December 2019, two copies of the foregoing corrected Appellant Brief and Joint Record Extract were served email and by first-class mail, postage pre-paid on: Appellee's, Potomac Concrete Co, Inc. 2200 Research Blvd., Suite 500, Rockville, MD 20850,

And

Creative Landscapes by Gregory, Inc., Executive Plaza III, Suite 704, 11350 McCormick Rd., Hunt Valley, MD 21031.

Adrienne Mallard

Signature

<p>17</p> <p>1 Greg Kenel?</p> <p>2 A He's the President.</p> <p>3 Q What's your relationship?</p> <p>4 A He's my brother.</p> <p>5 Q Julie Kenel, is that your wife or his</p> <p>6 wife?</p> <p>7 A My sister-in-law.</p> <p>8 Q So that's Greg's wife?</p> <p>9 A Yes, sir.</p> <p>10 Q Oscar Cruz you already told me about.</p> <p>11 What's his address, do you know?</p> <p>12 A Germantown, Maryland. I don't know the</p> <p>13 rest of it off the top of my head.</p> <p>14 Q That's one of the things that was asked</p> <p>15 for in the case. It's okay that you don't have it</p> <p>16 today but can you provide that to your counsel for</p> <p>17 me?</p> <p>18 A Yes.</p> <p>19 Q Oscar Lopez?</p> <p>20 A Oscar Lopez is a landscape foreman who was</p> <p>21 on the job when we were informed about someone had</p> <p>22 fallen.</p>	<p>19</p> <p>1 Dick?</p> <p>2 A Yes.</p> <p>3 Q And what did he learn, do you know?</p> <p>4 A That there was a problem with the steps.</p> <p>5 There was a slight deviation in the distance.</p> <p>6 Q You mean the riser step height?</p> <p>7 A Yes.</p> <p>8 Q Do you know what that deviation was?</p> <p>9 A From what he told me it was a total of</p> <p>10 three quarters of an inch.</p> <p>11 Q That's based on his measurement?</p> <p>12 A Yes.</p> <p>13 Q Have you ever measured it?</p> <p>14 A Yes.</p> <p>15 Q Can you tell me what your measurements</p> <p>16 were?</p> <p>17 A Right now they are six inches and five and</p> <p>18 three quarters.</p> <p>19 Q And you say "right now."</p> <p>20 Have these steps been changed or fixed or</p> <p>21 repaired in any way?</p> <p>22</p>
<p>18</p> <p>1 Q Do you know when that was?</p> <p>2 A June 2017.</p> <p>3 Q When you say he was on the job when you</p> <p>4 were informed, did he receive notice by somebody?</p> <p>5 A Yes.</p> <p>6 Q Who was that, do you know?</p> <p>7 A I think it was the -- okay, it was the</p> <p>8 Site Superintendent. Well, I called him and he</p> <p>9 said that he had already been informed by the Site</p> <p>10 Superintendent who I think the gentleman's name</p> <p>11 was Mark Dick at that time.</p> <p>12 Q And why did you call Oscar?</p> <p>13 A Because a representative with -- another</p> <p>14 representative with Ryland Homes had called me.</p> <p>15 Q But did you want to talk to Oscar about</p> <p>16 something in particular about the incident or</p> <p>17 what?</p> <p>18 A I wanted him to go and find out what the</p> <p>19 problem was.</p> <p>20 Q And who did you expect him to ask?</p> <p>21 A Mark Dick.</p> <p>22 Q Did he ever find anything out from Mark</p>	<p>20</p> <p>1 MS. FITZGERALD: Objection to the form.</p> <p>2 You can answer.</p> <p>3 A I don't know what that means.</p> <p>4 MR. FINNEGAN: Just a lawyer thing.</p> <p>5 You're going to hear us do all sorts of crazy</p> <p>6 stuff.</p> <p>7 A I'm sorry, could you repeat that?</p> <p>8 Q Sure. Have the stairs been fixed or</p> <p>9 repaired in any way?</p> <p>10 MS. FITZGERALD: Objection.</p> <p>11 A Yes.</p> <p>12 MR. FINNEGAN: You can have a continuing</p> <p>13 objection. I know it's based on subsequent</p> <p>14 remedial measure. It's fine.</p> <p>15 A I said yes.</p> <p>16 Q Do you know when that occurred?</p> <p>17 A I don't remember the date but June 2017,</p> <p>18 the day we were notified.</p> <p>19 Q And who did that, do you know?</p> <p>20 A Oscar did.</p> <p>21 Q Do you know what he did?</p> <p>22 A Yes.</p>

<p>21</p> <p>1 Q Can you tell me what he did?</p> <p>2 A He lowered this area here (indicating). I</p> <p>3 know she can't write that.</p> <p>4 MR. FINNEGAN: It's okay. That's my job.</p> <p>5 (Creative Landscapes Deposition Exhibit 3</p> <p>6 was marked for identification and retained by</p> <p>7 counsel.)</p> <p>8 Q You pointed to a photo. I have that photo</p> <p>9 marked as Exhibit 3. You pointed to a particular</p> <p>10 part of the photograph.</p> <p>11 Using that -- well, why don't you describe</p> <p>12 what you meant.</p> <p>13 A Where the walkway meets the step in front</p> <p>14 of the landing to the walkway.</p> <p>15 Q And how did he do that, do you know?</p> <p>16 A I wasn't there to see him do it but I</p> <p>17 would assume that he removed these bricks right</p> <p>18 here (indicating) and took out whatever stone dust</p> <p>19 or sand was under there and brought it down to the</p> <p>20 level that it is currently.</p> <p>21 Q Just so we're clear about what you're</p> <p>22 pointing to can you just circle that area?</p>	<p>23</p> <p>1 A Let me do it. It changed the distance</p> <p>2 from here to here (indicating), okay?</p> <p>3 Q Okay, and I'm doing this for the record.</p> <p>4 You just drew an arrow, a double sided</p> <p>5 arrow I'll call it on Exhibit 3?</p> <p>6 A Correct.</p> <p>7 Q Thank you. Who installed this step for</p> <p>8 lack of a better way to describe it, an in-between</p> <p>9 step between the walkway and the top of the stoop?</p> <p>10 A I don't know for certain which person</p> <p>11 would have done it.</p> <p>12 Q Someone from your company?</p> <p>13 A Yes.</p> <p>14 Q But the first time you learned that it was</p> <p>15 done was in June 2017?</p> <p>16 A Correct.</p> <p>17 Q Have you ever investigated who did it?</p> <p>18 A No.</p> <p>19 Q Why not?</p> <p>20 A Because I was really just worried about</p> <p>21 making it right. It had been that way for however</p> <p>22 many years we had done it and no one had ever told</p>
<p>22</p> <p>1 A Yes.</p> <p>2 Q Roughly circle that area.</p> <p>3 A Is it going?</p> <p>4 Q There it is.</p> <p>5 A (Witness complies.)</p> <p>6 Q Is it your testimony that he lowered this</p> <p>7 step here that I'm pointing to with my blue pen?</p> <p>8 A No.</p> <p>9 Q Was the effect of whatever he did a</p> <p>10 lowering of that step making it closer to the</p> <p>11 walkway?</p> <p>12 A No.</p> <p>13 Q So what did his fix or repair do?</p> <p>14 A It brought this distance -- I'm sorry, the</p> <p>15 distance from the top of the stoop to the top of</p> <p>16 the step into compliance with the top of the step</p> <p>17 to the walkway.</p> <p>18 Q So if I understand you and please tell me</p> <p>19 if I'm wrong, it changed the distance from here to</p> <p>20 here (indicating)?</p> <p>21 A No.</p> <p>22 Q Here to here (indicating)?</p>	<p>24</p> <p>1 us anything until we received that call that day</p> <p>2 so my priority was to get out there and get it</p> <p>3 fixed.</p> <p>4 Q Did you ever ask Oscar Cruz whether or not</p> <p>5 he did it?</p> <p>6 A No.</p> <p>7 Q Do you know why it was done?</p> <p>8 MS. FITZGERALD: Objection.</p> <p>9 A Is that a good objection?</p> <p>10 MS. FITZGERALD: You can answer unless</p> <p>11 otherwise instructed so I'm going to object but</p> <p>12 you can answer afterwards.</p> <p>13 A Okay.</p> <p>14 MR. FINNEGAN: Let me rephrase the</p> <p>15 question and you can certainly object again.</p> <p>16 Q Do you know why this in-between step was</p> <p>17 placed there?</p> <p>18 A Yes, I can surmise. You need the other</p> <p>19 photo. This one (indicating).</p> <p>20 (Creative Landscapes Deposition Exhibit 4</p> <p>21 was marked for identification and retained by</p> <p>22 counsel.)</p>

<p>33</p> <p>1 an eight inch rise?</p> <p>2 A Yes.</p> <p>3 Q And you just don't know if they did it?</p> <p>4 A I wasn't there.</p> <p>5 Q Do you know who Jason Thomas from</p> <p>6 CalAtlantic is?</p> <p>7 A Yes.</p> <p>8 Q Was he your point of contact with</p> <p>9 CalAtlantic for this job?</p> <p>10 A Yes.</p> <p>11 Q Have you ever had -- I'm sorry, go ahead.</p> <p>12 A At this point?</p> <p>13 Q Yes, and then I know it went to Mark</p> <p>14 later.</p> <p>15 A Yes, and it was probably someone else in</p> <p>16 between.</p> <p>17 Q Have you ever had a conversation with him</p> <p>18 about anything related to these particular units?</p> <p>19 A Could you expand on that a little bit?</p> <p>20 Q Sure. Now that I think about it it was a</p> <p>21 poor question so let me try to be more exact.</p> <p>22 Have you ever had a conversation with</p>	<p>35</p> <p>1 because -- seven years? I would have to ask the</p> <p>2 accounting department but by law you're supposed</p> <p>3 to keep it for a certain amount of time I think.</p> <p>4 I'm not really involved with that part. I'm sure</p> <p>5 we have that up to whatever --</p> <p>6 Q And I have some time sheets.</p> <p>7 A Right. And then -- I'm sorry.</p> <p>8 Q Just any drawings, anything else that</p> <p>9 would typically be part of a job like this?</p> <p>10 A We would probably keep them -- it really</p> <p>11 depends on the -- at least five years.</p> <p>12 Q Do you know if -- well, can you tell me if</p> <p>13 you've looked or anybody else from your company</p> <p>14 has looked to determine whether or not you have</p> <p>15 any other documents related to this job other than</p> <p>16 time sheets?</p> <p>17 A No, I haven't.</p> <p>18 (Creative Landscapes Deposition Exhibit 5</p> <p>19 and Exhibit 6 were marked for identification and</p> <p>20 retained by counsel.)</p> <p>21 Q Let me explain to you that I have time</p> <p>22 sheets here. I'm marked them as Exhibit 5 and I</p>
<p>34</p> <p>1 Jason Thomas from CalAtlantic about the riser</p> <p>2 height issue in front of 12511 Brick Yard</p> <p>3 Boulevard?</p> <p>4 A Only the day he called me and said there's</p> <p>5 a problem. We need to fix it.</p> <p>6 Q Do you know why there's no handrail in</p> <p>7 front of that unit?</p> <p>8 A It's only one step. It's not required by</p> <p>9 Code.</p> <p>10 Q Who told you that?</p> <p>11 A It's rule of thumb. If you only have to</p> <p>12 raise your foot once to get to the next one -- you</p> <p>13 have to raise it three times and you're not</p> <p>14 raising it three times.</p> <p>15 Q How long does your company keep records</p> <p>16 relating to a particular job like the Brick Yard</p> <p>17 Station job?</p> <p>18 A What types of records?</p> <p>19 Q Anything related to the project, time</p> <p>20 sheet, drawings, any type of plan documents,</p> <p>21 anything like that.</p> <p>22 A Well, time sheets I'm sure we keep</p>	<p>36</p> <p>1 also have the Subcontractor Agreement with Ryland.</p> <p>2 I've marked that as Exhibit 6 but those are all</p> <p>3 the documents I have related to this job from your</p> <p>4 company.</p> <p>5 Can you look for any drawings or any other</p> <p>6 documents you have and report back to your lawyer</p> <p>7 and let her know if you were able to find anything</p> <p>8 else?</p> <p>9 A Yes.</p> <p>10 Q About the time sheets real quick.</p> <p>11 Are you able to tell whether or not these</p> <p>12 time sheets are for 12511 Brick Yard Boulevard or</p> <p>13 some other part of the project?</p> <p>14 In other words, if you're going to tell me</p> <p>15 that these are definitely the time sheets for that</p> <p>16 unit because you've looked for them and this is</p> <p>17 what you found that's fine. I just want to make</p> <p>18 sure that I have the time sheets for this unit and</p> <p>19 I'm not going to hear later that this is just</p> <p>20 something that you found related to the community.</p> <p>21 A No, it says Ryland Brick Yard Model and</p> <p>22 Park.</p>

Transcript of Steven Kenel, Corporate Designee
Conducted on July 12, 2018

8 (29 to 32)

29	<p>1 underneath it whether it -- and since it is out of</p> <p>2 cement -- I mean the bricks are in cement on</p> <p>3 there. It either has a concrete in there or it</p> <p>4 probably has a CMU, concrete masonry unit block</p> <p>5 inside for support.</p> <p>6 Q Are you aware that Potomac Concrete poured</p> <p>7 the cement steps?</p> <p>8 A Once that -- once we found out about what</p> <p>9 happened and that was at the deposition -- or the</p> <p>10 request for -- whatever that is. That was the</p> <p>11 first time I knew Potomac was even on this job.</p> <p>12 Q Have you been on other jobs with them?</p> <p>13 A Yes.</p> <p>14 Q What other jobs?</p> <p>15 A There are a number of Pulte jobs that they</p> <p>16 work on that we work on. One of them is Cameron</p> <p>17 Park down in Alexandria. I think they have been</p> <p>18 on the same job as us in the Brick Yard. I'm</p> <p>19 sorry, not the Brick Yard. Potomac Yard down in</p> <p>20 Alexandria.</p> <p>21 I don't remember if they're in Cambria or</p> <p>22 not and they could be -- I don't do a lot of these</p>	31	<p>1 Q What did you do?</p> <p>2 A I went out and remeasured the step. That</p> <p>3 step, the one that has -- the one at 12511.</p> <p>4 Q And what were the results of your</p> <p>5 measurements again?</p> <p>6 A It was a six inch rise on the concrete</p> <p>7 face and a five and three quarter inch rise on the</p> <p>8 brick face.</p> <p>9 Q And prior to the repair made by Oscar the</p> <p>10 rise on the brick was you said five and a quarter?</p> <p>11 I'm not trying to put words in your mouth. I just</p> <p>12 want to make sure I understand.</p> <p>13 A No, I'm trying to remember. I think it</p> <p>14 was five and a quarter, yes.</p> <p>15 Q So the rise then on the concrete would</p> <p>16 have been six and a half?</p> <p>17 A No, it's still the same. It's six.</p> <p>18 Q Still the same?</p> <p>19 A Yes.</p> <p>20 Q Did your company take photos before you</p> <p>21 started your work and then after you finished your</p> <p>22 work?</p>
30	<p>1 Pulte -- I'm not the one that coordinates those</p> <p>2 particular sites so I'm not sure if that's all of</p> <p>3 them or not. They did do subcontracting for us on</p> <p>4 a job in Boyds/Clarksburg, Maryland called Cabin</p> <p>5 Branch for Winchester Homes. There could be more</p> <p>6 but I don't know.</p> <p>7 Q After learning they were involved in the</p> <p>8 Brick Yard Station job, did you speak with anyone</p> <p>9 at Potomac Concrete about anything related to</p> <p>10 this?</p> <p>11 A No.</p> <p>12 Q Even up through today?</p> <p>13 A Even up through today.</p> <p>14 Q Prior to coming to the deposition did you</p> <p>15 do anything to prepare and there's a caveat to</p> <p>16 that question? I'm not asking about any</p> <p>17 conversation you had with your lawyer. I'm not</p> <p>18 allowed to ask about that but anything else you</p> <p>19 may have done like speak to someone at your own</p> <p>20 company, speak to someone at some other company,</p> <p>21 look at documents, anything like that.</p> <p>22 A Yes.</p>	32	<p>1 A We do now.</p> <p>2 Q Back in June 2014 did you do that?</p> <p>3 A No.</p> <p>4 Q When your company came out to begin the</p> <p>5 work at this particular job you said there was</p> <p>6 rough grading done, right?</p> <p>7 A Yes.</p> <p>8 Q Do you know who did that?</p> <p>9 A No.</p> <p>10 Q And then you guys did some grading when</p> <p>11 you put the sand and stone dust down?</p> <p>12 A Correct.</p> <p>13 Q After you put the sand and stone dust down</p> <p>14 your company laid the pavers?</p> <p>15 A Yes.</p> <p>16 Q Do you know what, if any, measurements</p> <p>17 were taken of the cement stoops before they laid</p> <p>18 the pavers down?</p> <p>19 A No.</p> <p>20 Q Would you expect whoever was in charge of</p> <p>21 the job at that point to measure the stoops to</p> <p>22 make sure that you weren't going to get more than</p>

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IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND
CIVIL DIVISION

ADRIENNE MALLARD
13913 Concord Avenue
Laurel, MD 20707

Plaintiff,

V.

POTOMAC CONCRETE CO., INC.
8780 Virginia Meadows Drive
Manassas, VA 20109

and

CREATIVE LANDSCAPES BY GREGORY, INC
6126 Jefferson Pike
Frederick, MD 21703-7044

Mailed to Resident Agent
Gregory J. Kenel
1441 Silo Way
Silver Spring, MD 20905

Defendants.

CASE NO.: CAL 17-13531

MOTION FOR A NEW TRIAL (ADDENDUM)

Plaintiff's Motion for Summary Judgment Notwithstanding the Verdict.

Plaintiff, Adrienne Mallard (hereinafter "Plaintiff" or "I" or "my"), hereby kindly
submits an Addendum to MOTION FOR A NEW TRIAL, requesting the Court grant

judgment notwithstanding the jury's verdict and grant a new Hearing. Moreover, Plaintiff implores the Court to enter judgment on this issue in favor of the Plaintiff, based on the facts presented in trial.

Verdict Not Based on Actual Trial Evidence:

The scales are improperly unbalanced in the case of ADRIENNE MALLARD v POTOMAC CONCRETE CO., INC. and CREATIVE LANDSCAPES BY GREGORY, INC. The verdict did not correctly apply the law and justice was obstructed.

During jury deliberation, jurors asked three questions (not one concerning the law, facts or evidence). Time Plaintiff filed? Type of shoes? Why Creative Landscape by Gregory not know of injuries until 2017?

Concerning question on shoes, maybe jurors should have been reminded Plaintiff had on flat shoes. From my understanding, they were told they have all evidence. Dress shoes were left under office desk (as stated in deposition and testimony in Trial).

Question proves some jurors were inattentive (sleeping) and not listening to trial testimonies (Direct Evidence/jury instructions). During my trial testimony, I stated hospital nurse said, had I had on dress shoes, bone would have come straight out leg. I also testified my family and I went back to work (near) to get car, lunch bag and dress shoes. This answered type of shoes. Concerning question on time filing and why Creative Landscape didn't know till 2017... bare no significance or evidence in deliberating the outcome of this case. Jurors generally question on instructions or

matter of law, or need testimony reread as stated on www.MDCourts.gov. Plaintiff had no proof of liability at Trial, and the Defense had numerous liability presented and proven at Trial. Seems jurors were attempting to find some kind of fault outside of trial evidence on Plaintiff. While ignoring Defenses multiple evidence of faults, two different colored steps with one blending into sidewalk and confessing to guilt three times. If the verdict was based on any assumptions, based on questioning shoe type (I had on flats and never liked high heels, I'm 5'10), then the verdict did not fall in line with the evidence and jury instructions. Also confirming jury bias, one juror rolling eyes while I testified. Jurors questions can expose jury bias.

A juror (fussing out loud in my original Motion for New Trial) delayed court proceedings for One hour by not showing up. She did not call, answer calls, nor returned the Courts calls before 10:00 AM. About 10:30 AM, Court called missing juror again, she did not answer. Juror arrived around 11:00 AM.

It appears, some jurors were bias. Questions and actions seem prejudicial in nature. Jury instruction listed by Plaintiff states, must reach verdict by remaining impartial and independent. Considering only factual evidence introduced during trial and how it compares to the legal standard. Jurors must not guess about testimony or exhibits not admitted into evidence when deliberating.

Verdict Did Not Apply the Law or Jury Instructions

The verdict is against the weight of evidence at trial. Plaintiff proved in court she did absolutely nothing wrong. Evidence shows Defense infractions causing liability...

1. Admitted in trial, not measuring after completion of project.
2. Admitted in trial, built one step, not build ground foundation up to code as requested.
3. Admitted in trial, repaired the uneven/multi-colored step (removing pavers).
4. Building steps that are a danger to public safety.
5. Violating Means of Egress/Change of Elevation paragraph in IBC and LSC Code, not having a strong **color contrast**.

The verdict did not correctly apply the law based on facts presented and Maryland State Codes violations. Throughout the entire three-day Trial, Defense provided no evidence proving they were within the codes, only provided two testimonies to the Court, supplying no factual evidence at all if Plaintiff was at fault. Inevitably proving the Defense is in fact liable for Plaintiffs Life-Long injuries.

Plaintiff provided about ten testimonial evidence proving:

1. Defense is positively liable for Plaintiffs multiple injuries forced to suffer the rest of her life.
2. Defense multiple Maryland Code Violations.
3. Defense constructed blended dangerous steps, misleading, still a danger to the public.
4. Defense should not have built the step.
5. Defense admitted did not measure steps.

6. Defense admitted to repairing the step in 2017.
7. Plaintiff fell only because of misleading, uneven, multi-colored deceptive steps.

In conclusion, in the jury instructions submitted by the Plaintiff, 1.14 Burden of Proof: Preponderance of Evidence Standard states a party must prove it is more likely so than not so, having more convincing forces, more likely true than not true.

As stated in this Motion, absolutely no evidence show or prove if Plaintiff was liable.

Plaintiff used great care as always (never broke a bone prior), looking down before she proceeded... Fact.

As proven by exhibit pictures, the Defendant constructed one step with the same red brick color and pattern as the entire sidewalk. Bleeding together, creating a dangerously misleading step, while the concrete platform is white and appearing to be one step. As proven by the IBC and LSC, Defense violated codes by not having strong color contrast creating an illusion. Also, as proven by violating codes once again, not installing a handrail for two steps in an office location.

Your Honor, the scales only must be slightly tipped as stated in Plaintiffs closing arguments to the jury. In this case, the scales are dramatically off centered, with all evidence heavily weighing in on the Defense obviously being the only party liable for Plaintiffs Life-Long sentence of multiple permanent injuries. Plaintiff pleads with the Court, seeking justice for Four and a Half Unbearable Years of pain, suffering and Life-

Time distress, caused by the Defense dismissiveness and carelessness for public safety and Maryland Code Regulations.

Plaintiff requests that this Court enter judgment in favor of the Plaintiff and order a new Hearing on Plaintiff's Damages. Alternatively, Plaintiff requests a new trial.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document was sent electronically by email, as well as mailed to:

Info@FrankDailyLaw.com

Frank F. Daily, P. A.

Executive Plaza III

Suite 704

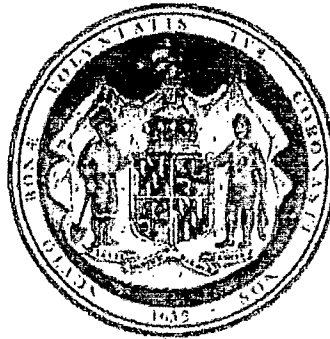
11350 McCormick Road

Hunt Valley, Maryland 21031

410-584-9443

On the 14th day of November 2018

Adrienne Mallard



State of Maryland Fire Prevention Code

*Larry Hogan
Governor*

*Boyd K. Rutherford
Lt. Governor*

*Colonel William M. Pallozzi
Secretary
Department of State Police*

*Brian S. Geraci
State Fire Marshal*

*Promulgated by:
State Fire Prevention Commission
C. Daniel Davis, Jr., Chairman*

<http://sfpc.mdsp.org>

(Revised January 1, 2016)

(5) "NFPA" means National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

.06 Incorporation by Reference.

A. In this chapter, the following documents are incorporated by reference, with the amendments specified in this chapter. Tentative interim amendments and supplements to these documents and to the codes and standards referenced in these documents are not included as part of this chapter unless specifically adopted by this chapter.

B. Documents Incorporated.

- (1) NFPA 1 Fire Code (2015 Edition).
- (2) NFPA 101 Life Safety Code (2015 Edition).
- (3) International Building Code as incorporated by reference by the Maryland Building Performance Standards, which can be found under COMAR 05.02.01.02-1.

C. Incorporation by Reference Locations. The documents incorporated by reference in §B of this regulation are available for inspection in State depository libraries.

X

.07 National Fire Protection Association 101 Life Safety Code. X

The NFPA 101 Life Safety Code (2015 Edition) is incorporated by reference, except for the following amendments:

A. Amend Section 2.2 to add the referenced publication NFPA 1124 Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 edition.

B. Amend Subsection 3.3.62 to add the following Paragraph: 3.3.62.3 Bulkhead Door. A type of door assembly covering an opening in the ground providing direct access to a basement, the floor of which is not more than 8 feet below ground level. The door consists of a single rigid leaf or two overlapping rigid leaves or covers which need to be pushed or lifted upwards in order to be opened. A person, after opening the door, can walk up a series of steps to escape to the outside.

C. Amend Paragraph 3.3.142.1 and Subparagraphs 16.6.1.1.2 and 17.6.1.1.2 to delete "more than 3, but".

D. Amend Paragraphs 3.3.190.4 and 6.1.4.1 to delete "four or more".

E. Amend Paragraphs 3.3.190.12 and 6.1.9.1 to replace "four" with "six".

F. Amend Subsection 4.5.8 and Paragraph 4.6.12.1 to delete "for compliance with the provisions of this Code".

G. Amend Paragraph 4.6.12.3 to delete "by the Code".

H. Amend Subsection 4.8.2 to add the following Paragraph: 4.8.2.4 Emergency action plans shall be maintained in a location approved by the AHJ.

I. Amend Subparagraph 7.2.1.5.12 to replace "required" with "provided".

J. Amend Subparagraph 7.2.1.6.3 to replace "in Chapters 11 through 43" with "by the AHJ and Chapters 11 through 43".

X No amendments deleting hand rails, etc X

23.7.1.3.2 The plan shall be coordinated with, and reviewed by, the fire department legally committed to serve the facility.

23.7.1.4 Employees of detention and correctional occupancies shall be instructed in the proper use of portable fire extinguishers and other manual fire suppression equipment.

23.7.1.4.1 The training specified in 23.7.1.4 shall be provided to new staff promptly upon commencement of duty.

23.7.1.4.2 Refresher training shall be provided to existing staff at not less than annual intervals.

23.7.2 Combustible Personal Property. Books, clothing, and other combustible personal property allowed in sleeping rooms shall be stored in closable metal lockers or an approved fire-resistant container.

23.7.3 Heat-Producing Appliances. The number of heat-producing appliances, such as toasters and hot plates, and the overall use of electrical power within a sleeping room shall be controlled by facility administration.

23.7.4* Furnishings, Mattresses, and Decorations.

23.7.4.1 Draperies and curtains, including privacy curtains, in detention and correctional occupancies shall be in accordance with the provisions of 10.3.1.

23.7.4.2 Newly introduced upholstered furniture within detention and correctional occupancies shall be tested in accordance with the provisions of 10.3.2.1(2) and 10.3.3.

23.7.4.3* Newly introduced mattresses within detention and correctional occupancies shall be tested in accordance with the provisions of 10.3.2.2 and 10.3.4.

23.7.4.4 Combustible decorations shall be prohibited in any detention or correctional occupancy unless flame-retardant.

23.7.4.5 Wastebaskets and other waste containers shall be of noncombustible or other approved materials. Waste containers with a capacity exceeding 20 gal (76 L) shall be provided with a noncombustible lid or lid of other approved material.

23.7.5 Keys. All keys necessary for unlocking doors installed in a means of egress shall be individually identified by both touch and sight.

23.7.6 Portable Space-Heating Devices. Portable space-heating devices shall be prohibited in all detention and correctional occupancies.

23.7.7 Door Inspection. Doors and door hardware in means of egress shall be inspected monthly by an appropriately trained person. The inspection shall be documented.

Chapter 24 One- and Two-Family Dwellings

24.1 General Requirements.

24.1.1 Application.

24.1.1.1* The requirements of this chapter shall apply to one- and two-family dwellings, which shall include those buildings containing not more than two dwelling units in which each dwelling unit is occupied by members of a single family with not more than three outsiders, if any, accommodated in rented rooms.

24.1.1.2 The requirements of this chapter shall apply to new buildings and to existing or modified buildings according to the provisions of 1.3.1 of this Code.

24.1.2 Multiple Occupancies.

24.1.2.1 Multiple occupancies shall be in accordance with 6.1.14.

24.1.2.2 No dwelling unit of a residential occupancy shall have its sole means of egress pass through any nonresidential occupancy in the same building, unless otherwise permitted by 24.1.2.2.1 or 24.1.2.2.2.

24.1.2.2.1 In buildings that are protected by an automatic sprinkler system in accordance with Section 9.7, dwelling units of a residential occupancy shall be permitted to have their sole means of egress pass through a nonresidential occupancy in the same building, provided that the following criteria are met:

- (1) The dwelling unit of the residential occupancy shall comply with Chapter 24.
- (2) The sole means of egress from the dwelling unit of the residential occupancy shall not pass through a high hazard contents area as defined in 6.2.2.4.

24.1.2.2.2 In buildings that are not protected by an automatic sprinkler system in accordance with Section 9.7, dwelling units of a residential occupancy shall be permitted to have their sole means of egress pass through a nonresidential occupancy in the same building, provided that the following criteria are met:

- (1) The sole means of egress from the dwelling unit of the residential occupancy to the exterior shall be separated from the remainder of the building by fire barriers having a minimum 1-hour fire resistance rating.
- (2) The dwelling unit of the residential occupancy shall comply with Chapter 24.
- (3) The sole means of egress from the dwelling unit of the residential occupancy shall not pass through a high hazard contents area as defined in 6.2.2.4.

24.1.2.3 Multiple dwelling units of a residential occupancy shall be permitted to be located above a nonresidential occupancy only where one of the following conditions exists:

- (1) Where the dwelling unit of the residential occupancy and exits therefrom are separated from the nonresidential occupancy by construction having a minimum 1-hour fire resistance rating
- (2) Where the nonresidential occupancy is protected throughout by an approved, supervised automatic sprinkler system in accordance with Section 9.7
- (3) Where the nonresidential occupancy is protected by an automatic fire detection system in accordance with Section 9.6

24.1.3 Special Definitions. Special terms applicable to this chapter are defined in Chapter 3 of this Code. Where necessary, other terms are defined in the text.

24.1.4 Classification of Occupancy. See 6.1.8 and 24.1.1.1.

24.1.5 Classification of Hazard of Contents. The contents of residential occupancies shall be classified as ordinary hazard in accordance with 6.2.2.

24.1.6 Minimum Construction Requirements. (No special requirements.)

24.1.7 Occupant Load. (No requirements.)

7.2.2.3 Stair Details.**7.2.2.3.1 Construction.**

7.2.2.3.1.1 All stairs serving as required means of egress shall be of permanent fixed construction, unless they are stairs serving seating that is designed to be repositioned in accordance with Chapters 12 and 13.

7.2.2.3.1.2 Each stair, platform, and landing, not including handrails and existing stairs, in buildings required in this Code to be of Type I or Type II construction shall be of noncombustible material throughout.

7.2.2.3.2 Landings.

7.2.2.3.2.1 Stairs shall have landings at door openings, except as permitted in 7.2.2.3.2.5.

7.2.2.3.2.2 Stairs and intermediate landings shall continue with no decrease in width along the direction of egress travel.

7.2.2.3.2.3 In new buildings, every landing shall have a dimension, measured in the direction of travel, that is not less than the width of the stair.

7.2.2.3.2.4 Landings shall not be required to exceed 48 in. (1220 mm) in the direction of travel, provided that the stair has a straight run.

7.2.2.3.2.5 In existing buildings, a door assembly at the top of a stair shall be permitted to open directly to the stair, provided that the door leaf does not swing over the stair and the door opening serves an area with an occupant load of fewer than 50 persons.

7.2.2.3.3 Tread and Landing Surfaces.

7.2.2.3.3.1 Stair treads and landings shall be solid, without perforations, unless otherwise permitted in 7.2.2.3.3.4.

7.2.2.3.3.2* Stair treads and landings shall be free of projections or lips that could trip stair users.

7.2.2.3.3.3 If not vertical, risers on other than existing stairs shall be permitted to slope under the tread at an angle not to exceed 30 degrees from vertical, provided that the projection of the nosing does not exceed 1½ in. (38 mm).

7.2.2.3.3.4 The requirement of 7.2.2.3.3.1 shall not apply to noncombustible grated stair treads and landings in the following occupancies:

- (1) Assembly occupancies as otherwise provided in Chapters 12 and 13
- (2) Detention and correctional occupancies as otherwise provided in Chapters 22 and 23
- (3) Industrial occupancies as otherwise provided in Chapter 40
- (4) Storage occupancies as otherwise provided in Chapter 42

7.2.2.3.4* **Tread and Landing Slope.** The tread and landing slope shall not exceed ¼ in./ft (21 mm/m) (a slope of 1 in 48).

7.2.2.3.5* **Riser Height and Tread Depth.** Riser height shall be measured as the vertical distance between tread nosings. Tread depth shall be measured horizontally, between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge, but shall not include beveled or rounded tread surfaces that slope more than 20 degrees (a slope of 1 in 2.75). At tread nosings, such beveling or rounding shall not exceed ½ in. (13 mm) in horizontal dimension.

7.2.2.3.6 Dimensional Uniformity.

7.2.2.3.6.1 Variation in excess of ⅛ in. (4.8 mm) in the depth of adjacent treads or in the height of adjacent risers shall be prohibited, unless otherwise permitted in 7.2.2.3.6.3.

7.2.2.3.6.2 The tolerance between the largest and smallest riser or between the largest and smallest tread shall not exceed ⅛ in. (9.5 mm) in any flight.

7.2.2.3.6.3 Where the bottom or top riser adjoins a sloping public way, walk, or driveway having an established finished ground level and serves as a landing, the bottom or top riser shall be permitted to have a variation in height of not more than 1 in. in every 12 in. (25 mm in every 305 mm) of stairway width.

7.2.2.3.6.4* All tread nosings of stairs utilizing the provision of 7.2.2.3.6.3 shall be marked in accordance with 7.2.2.5.4.3. Those portions of the marking stripe at locations where the riser height below the nosing is inconsistent by more than ⅛ in. (4.8 mm), relative to other risers in the stair flight, shall be distinctively colored or patterned, incorporating safety yellow, to warn descending users of the inconsistent geometry relative to other steps in the flight.

7.2.2.4 Guards and Handrails.**7.2.2.4.1 Handrails.**

7.2.2.4.1.1 Stairs and ramps shall have handrails on both sides, unless otherwise permitted in 7.2.2.4.1.5 or 7.2.2.4.1.6.

7.2.2.4.1.2 In addition to the handrails required at the sides of stairs by 7.2.2.4.1.1, the following provisions shall apply:

1. For new stairs, handrails shall be provided within 30 in. (760 mm) of all portions of the required egress width.
2. For existing stairs, handrails shall meet the following criteria:
 - (a) They shall be provided within 44 in. (1120 mm) of all portions of the required egress width.
 - (b) Such stairs shall not have their egress capacity adjusted to a higher occupant load than permitted by the capacity factor in Table 7.3.3.1 if the stair's clear width between handrails exceeds 60 in. (1525 mm).

7.2.2.4.1.3 Where new intermediate handrails are provided in accordance with 7.2.2.4.1.2, the minimum clear width between handrails shall be 20 in. (510 mm).

7.2.2.4.1.4* The required egress width shall be provided along the natural path of travel.

7.2.2.4.1.5 If a single step or a ramp is part of a curb that separates a sidewalk from a vehicular way, it shall not be required to have a handrail.

7.2.2.4.1.6 Existing stairs, existing ramps, stairs within dwelling units and within guest rooms, and ramps within dwelling units and guest rooms shall be permitted to have a handrail on one side only.

7.2.2.4.2 Continuity. Required guards and handrails shall continue for the full length of each flight of stairs. At turns of new stairs, inside handrails shall be continuous between flights at landings.

7.2.2.4.3 Projections. The design of guards and handrails and the hardware for attaching handrails to guards, balusters, or walls shall be such that there are no projections that might engage loose clothing. Openings in guards shall be designed to prevent loose clothing from becoming wedged in such openings.

Chapter 24 1-2 Family Dwellings

24.2.5 Stairs, Ramps, and Guards.

24.2.5.1 Stairs, ramps, guards, and handrails shall be in accordance with 7.2.2 for stairs, 7.2.2.4 for guards, and 7.2.5 for ramps, as modified by 24.2.5.1.1 through 24.2.5.1.3.

24.2.5.1.1 The provisions of 7.2.2.5, 7.2.5.5, and 7.7.3 shall not apply.

24.2.5.1.2 If serving as a secondary means of escape, stairs complying with the fire escape requirements of Table 7.2.8.4.1(a) or Table 7.2.8.4.1(b) shall be permitted.

24.2.5.1.3 If serving as a secondary means of escape, ramps complying with the existing ramp requirements of Table 7.2.5.2(b) shall be permitted.

24.2.5.2 Interior stairways shall be provided with means capable of providing artificial light at the minimum level specified by 7.8.1.3 for exit stairs, measured at the center of treads and on landing surfaces within 24 in. (610 mm) of step nosings.

24.2.5.3 For interior stairways, manual lighting controls shall be reachable and operable without traversing any step of the stair.

24.2.5.4 The clear width of stairs, landings, ramps, balconies, and porches shall be not less than 36 in. (915 mm), measured in accordance with 7.3.2.

24.2.5.5 Spiral stairs and winders in accordance with 7.2.2.2.3 and 7.2.2.2.4 shall be permitted within a single dwelling unit.

24.2.5.6 No sleeping rooms or living areas shall be accessible only by a ladder, a stair ladder, an alternating tread device, or folding stairs or through a trap door.

24.2.6 Hallways.

24.2.6.1 The width of hallways, other than existing approved hallways, which shall be permitted to continue to be used, shall be not less than 36 in. (915 mm).

24.2.6.2 The height of hallways, other than existing approved hallways, which shall be permitted to continue to be used, shall be not less than 7 ft (2135 mm) nominal, with clearance below projections from the ceiling of not less than 6 ft 8 in. (2030 mm) nominal.

24.2.7 Bulkheads.

24.2.7.1 Bulkhead Enclosures. Where provided, bulkhead enclosures shall provide direct access to the basement from the exterior.

24.2.7.2 Bulkhead Enclosure Stairways. Stairways serving bulkhead enclosures that are not part of the required primary means of escape, and that provide access from the outside finished ground level to the basement, shall be exempt from the provisions of 24.2.5.1 when the maximum height from the basement finished floor level to the finished ground level adjacent to the stairway does not exceed 8 ft (2440 mm), and the finished ground level opening to the stairway is covered by a bulkhead enclosure with hinged doors or other approved means.

24.3 Protection.

24.3.1 Protection of Vertical Openings. (No requirements.)

24.3.2 Reserved.

24.3.3 Interior Finish.

24.3.3.1 General. Interior finish shall be in accordance with Section 10.2.

24.3.3.2 Interior Wall and Ceiling Finish. Interior wall and ceiling finish materials complying with Section 10.2 shall be Class A, Class B, or Class C.

24.3.3.3 Interior Floor Finish. (No requirements.)

24.3.3.4 Contents and Furnishings. Contents and furnishings shall not be required to comply with Section 10.3.

24.3.4 Detection, Alarm, and Communications Systems. Smoke alarms or a smoke detection system shall be provided in accordance with either 24.3.4.1 or 24.3.4.2, as modified by 24.3.4.1*.

24.3.4.1* Smoke alarms shall be installed in accordance with 9.6.2.10 in the following locations:

- (1) All sleeping rooms
- (2)* Outside of each separate sleeping area, in the immediate vicinity of the sleeping rooms
- (3) On each level of the dwelling unit, including basements

24.3.4.2 Dwelling units shall be protected by an approved smoke detection system in accordance with Section 9.6 and equipped with an approved means of occupant notification.

24.3.4.3 In existing one- and two-family dwellings, approved smoke alarms powered by batteries shall be permitted.

24.3.5* Extinguishment Requirements.

24.3.5.1 All new one- and two-family dwellings shall be protected throughout by an approved automatic sprinkler system in accordance with 24.3.5.2.

24.3.5.2 Where an automatic sprinkler system is installed, either for total or partial building coverage, the system shall be in accordance with Section 9.7; in buildings of four or fewer stories in height above grade plane, systems in accordance with NFPA 13R, *Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height*, and with NFPA 13D, *Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes*, shall also be permitted.

24.4 Reserved.

24.5 Building Services.

24.5.1 Heating, Ventilating, and Air-Conditioning.

24.5.1.1 Heating, ventilating, and air-conditioning equipment shall comply with the provisions of Section 9.2.

24.5.1.2 Unvented fuel-fired heaters shall not be used unless they are listed and approved.

24.5.2 Reserved.

Chapter 25 Reserved

Chapter 26 Lodging or Rooming Houses

26.1 General Requirements.

26.1.1 Application.

26.1.1.1* The requirements of this chapter shall apply to buildings that provide sleeping accommodations for 16 or fewer persons on either a transient or permanent basis, with or without meals, but without separate cooking facilities for individual occupants, except as provided in Chapter 24.

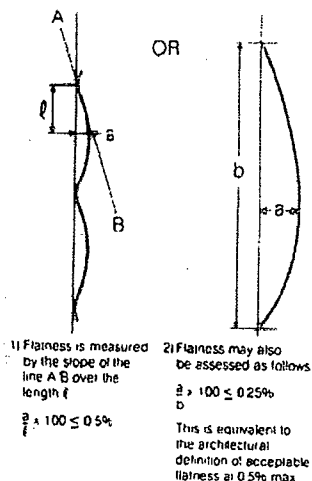


Figure 11. Measurement of flatness.

- Joints that minimize dirt accumulation should be designed.
- The possibility of staining of the stainless steel by runoff from other materials, ie, rust from carbon steel clips or fasteners, should be avoided.
- Grooves, recesses, and excessively complex contours, which hamper the regular easy cleaning associated with stainless steel, should be avoided.

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See ALSO CORROSION; ENVELOPES, BUILDING; KITCHENS, RESIDENTIAL; RESTAURANT AND SERVICE KITCHENS; STRUCTURAL STEEL—GENERAL PRINCIPLES

NICKEL DEVELOPMENT
 INSTITUTE
 Toronto, Ontario, Canada

STAINS. See PAINTS AND COATINGS.

STAIRS AND RAMPS—SAFETY DESIGN ASPECTS

According to the National Safety Council, more than 12,000 Americans die each year in falls, which is the nation's cause of accidental deaths second only to motor vehicle accidents. For people over 75 years old, falls are the leading cause of accidental deaths. Of the total number of fatal falls, about 3800 people die on stairs. The Consumer Product Safety Commission's National Electronic Injury Surveillance System (NEISS) substantiates that falls on stairs alone result in more than 800,000 injuries each year involving hospital treatment. The NEISS is a computerized data base compiled from records in selected hospitals across the United States. In addition to reporting that falls are the second leading cause of accidental deaths in the United States, the National Safety Council also reports that a majority of falls arise from accidents in the home. (From this data it is inexplicable that the One and Two Family Dwelling Code has more relaxed stair safety criteria for residences than the national model code.) It has also been estimated that there are more than 2.5 million falls on stairs that result in minor or temporary disability not involving professional medical attention.

Various statistical studies estimate that the annual cost of stair fall injuries alone (in terms of medical expenses, lost earnings, and liability claims) exceeds the annual construction costs of new stairs in the United States, more than \$2 billion (1). Of course, it is not possible to quantify the toll in human pain, suffering, and degradation in life quality resulting from fall injuries.

Because the incorporation of safe design criteria for stairs and ramps adds little to either design or construction costs, it can be seen that safety engineering of facilities before construction is extremely cost efficient. Therefore, professional architects or engineers should pay particular attention to safety and human factors in their professional role because of the U.S. accident record regarding falls, the tendency toward an increasingly litigious society, and a heightened awareness of professional liabilities.

TRADITIONAL APPROACHES

Traditionally, building/facility designers have tended to rely on compliance with statutory codes and, to a lesser extent, on consensus standards as safe design criteria.

However, there are important reasons why that approach is inadequate; these include the following:

- Codes and standards are normally developed by consensus. That is, various factions, usually having a variety of conflicts of interest, meet and agree on criteria. This sort of "least common denominator" approach is neither the most effective nor the "right stuff." A recent example of a code conflict of interest is illustrated by a 1988 U.S. Supreme Court ruling that upheld a jury verdict against Allied Tube & Conduit Corp. for its role in defeating a 1981 version of the National Fire Protection Association's model building code. The change would have allowed the use of Poly(vinyl chloride) electrical conduit (not manufactured by Allied) as an alternative to steel conduit (made by Allied). Allied blocked the change by paying the NFPA memberships of 150 people whose votes helped to defeat the code change. Consensus standards are, therefore, considered by code compliance officials to be minimum requirements, and codes can represent inadequate safety guidelines.
- Good architectural design for stairs and ramps requires the combination of scientific and engineering principles with aesthetic regard. Considerable judgment is required; no code can anticipate every possible combination of field conditions.
- Codes can contain technical errors (including typos) and grammatical errors, and they are silent on many technical issues. Codes are only a partial guide, are limited in scope, and have dubious technical origins for some of their requirements (2).

Therefore, because it is readily apparent that fall accidents are foreseeable, the architect, engineer, public facility manager, property owner, and municipal authority should exercise reasonable care and professional judgment in the layout, design, construction, and maintenance of stairways and ramps. The trend in case law is that mere compliance with a code or standard is not, by itself, a defense against negligence per se.

Because code and standard development has been a committee effort with inadequate stair safety engineering representation, statutory guidelines incorporating only minimum safety measures have been promulgated and some hazardous stair and ramp design features have been legitimized. In all major codes, certain stair safety aspects have been addressed by "silence." Examples of the latter are the lack of code provisions barring the presence of visual distractions in commercial occupancies at the very top or bottom of stairs and the lack of a definition of the term "slip-resistant." With regard to hazardous design there has been a particular problem in connection with accessibility requirements. The ANSI A117.1 committee and the compilers of many municipal, regional, and county codes have been engrossed with safe access for the handicapped; as a result, insufficient regard for the safety of the able-bodied majority has resulted. Strict compliance with the ANSI code can still permit some serious hazards



Figure 1. Unsafe ramp imposed over existing stair.

if practical judgment is not exercised (3). Actually, there is no code that pays adequate attention to safe design criteria for the ambulatory, and some of the recommended design features to accommodate the handicapped cause accidents to the population at large. The concerns of two population segments are not mutually exclusive, and a better effort is needed to accommodate everyone. Figure 1 shows an incompatible mixing of an existing stair and a handicap access ramp. In this situation, the handrail is not the length of the ramp and the ramp also projects out such that it is a tripping hazard to crosswise pedestrian traffic in the room.

Safety criteria that should be considered in designing stairs and ramps (paying particular attention to the needs of the people who will be expected to use the facilities being designed) follow.

STAIR AND RAMP DESIGN

A safe ramp and stairway system (including existing stairs that have one, two, or three steps) should have the following characteristics for both commercial/residential occupancies including one and two family dwellings:

1. Reachable, continuously graspable, and structurally stable handrails on both sides, with intermediate handrails as required.
2. Risers and treads properly proportioned (geometry) having minimal tolerances.
3. Slip-resistant tread, tread nosing, and ramp surfaces.
4. Adequate lighting, appropriately located and controlled.
5. Good maintenance.
6. Guardrails (and toeboards on steps if open on the side).
7. Absence of environmentally triggered factors.
8. General compliance with an up-to-date major building code, or, preferably, the NFPA Life Safety Code.
9. Stairs with at least three steps (except those exist-

CHAPTER 1

SCOPE AND ADMINISTRATION

User note: Code change proposals to this chapter will be considered by the Administrative Code Development Committee during the 2016 (Group B) Code Development Cycle. See explanation on page iv.

PART 1—SCOPE AND APPLICATION

SECTION 101 GENERAL

[A] **101.1 Title.** These regulations shall be known as the *Building Code* of [NAME OF JURISDICTION], hereinafter referred to as "this code."

[A] **101.2 Scope.** The provisions of this code shall apply to the construction, *alteration*, relocation, enlargement, replacement, *repair*, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

Exception: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with a separate means of egress, and their accessory structures not more than three stories above grade plane in height, shall comply with the *International Residential Code*.

[A] **101.2.1 Appendices.** Provisions in the appendices shall not apply unless specifically adopted.

[A] **101.3 Intent.** The purpose of this code is to establish the minimum requirements to provide a reasonable level of safety, public health and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment and to provide a reasonable level of safety to fire fighters and emergency responders during emergency operations.

[A] **101.4 Referenced codes.** The other codes listed in Sections 101.4.1 through 101.4.7 and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference.

[A] **101.4.1 Gas.** The provisions of the *International Fuel Gas Code* shall apply to the installation of gas piping from the point of delivery, gas appliances and related accessories as covered in this code. These requirements apply to gas piping systems extending from the point of delivery to the inlet connections of appliances and the installation and operation of residential and commercial gas appliances and related accessories.

[A] **101.4.2 Mechanical.** The provisions of the *International Mechanical Code* shall apply to the installation, alterations, repairs and replacement of mechanical systems, including equipment, appliances, fixtures, fittings and/or appurtenances, including ventilating, heating, cool-

ing, air-conditioning and refrigeration systems, incinerators and other energy-related systems.

[A] **101.4.3 Plumbing.** The provisions of the *International Plumbing Code* shall apply to the installation, alteration, repair and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewage system and all aspects of a medical gas system. The provisions of the *International Private Sewage Disposal Code* shall apply to private sewage disposal systems.

[A] **101.4.4 Property maintenance.** The provisions of the *International Property Maintenance Code* shall apply to existing structures and premises; equipment and facilities; light, ventilation, space heating, sanitation, life and fire safety hazards; responsibilities of owners, operators and occupants; and occupancy of existing premises and structures.

[A] **101.4.5 Fire prevention.** The provisions of the *International Fire Code* shall apply to matters affecting or relating to structures, processes and premises from the hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices; from conditions hazardous to life, property or public welfare in the occupancy of structures or premises; and from the construction, extension, repair, alteration or removal of fire suppression, automatic sprinkler systems and alarm systems or fire hazards in the structure or on the premises from occupancy or operation.

[A] **101.4.6 Energy.** The provisions of the *International Energy Conservation Code* shall apply to all matters governing the design and construction of buildings for energy efficiency.

[A] **101.4.7 Existing buildings.** The provisions of the *International Existing Building Code* shall apply to matters governing the repair, alteration, change of occupancy, addition to and relocation of existing buildings.

SECTION 102 APPLICABILITY

[A] **102.1 General.** Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern.

[A] **102.2 Other laws.** The provisions of this code shall not be deemed to nullify any provisions of local, state or federal law.

1 And I usually go about 90 minutes, and
2 I know you-all have to get your witnesses in
3 here. I'll usually go until 4:30 or 5:00. I'm
4 going to start at 10:00 each day. The only
5 thing I have that is going to possibly interfere
6 a little bit with this is Wednesday. I have a
7 2:00 meeting on a mediation, called ADR here in
8 the county, and that's set for a followup.

9 Madam Clerk, Tiffany, you have to make
10 sure maybe on Wednesday that that file is there
11 over in Dina's office. You're liable to see
12 lawyers running, trying to figure out where to
13 go on Wednesday at 2:00 or 1:30.

14 Anything else, sir?

15 MR. FINNEGAN: Your Honor, I do have
16 something, and I just thought of it. In light
17 of the Court's ruling on the motion for
18 reconsideration as to Potomac Concrete, can we
19 amend the caption to Adrienne Mallard vs.
20 Creative Landscapes by Gregory, Inc., so there's
21 no confusion?

22 Right now, I think it's styled Potomac
23 Concrete as a defendant. I don't know if there
24 would be any confusion as to who they are or --

25 THE COURT: Well, they won't even see

1 it until somebody gives me a verdict sheet,
2 right?

3 MR. FINNEGAN: Yeah. All right, I just
4 wanted to make sure, if the case was called, it
5 wasn't called in that light.

6 THE COURT: Oh, well, you hear that,
7 Tiffany?

8 THE CLERK: Yes. Well, however the
9 verdict sheet is written, that's how I read it.

10 THE COURT: Just -- you don't want them
11 to mention Potomac Concrete, right?

12 MR. FINNEGAN: Correct.

13 THE COURT: Yeah. Can you remember
14 that?

15 THE CLERK: Yes, I can --

16 THE COURT: I don't know that you're
17 going to be calling the caption again, are you?
18 Why would you? Only on the verdict.

19 THE CLERK: Only on the verdict.

20 THE COURT: Yeah, and then the verdict
21 is going to speak for itself.

22 MR. DAILY: And probably not -- when
23 the case is called, it's probably not in front
24 of the jury, so...

25 THE CLERK: Yeah. I normally call the

1 case early in the morning before the jury comes
2 in.

3 MR. DAILY: Yes, right.

4 MR. FINNEGAN: Okay, thank you.

5 THE COURT: Now?

6 MR. FINNEGAN: Yes.

7 THE COURT: Mr. Bailiff?

8 THE BAILIFF: Yes, sir.

9 MR. FINNEGAN: Okay. Twenty-six, huh?

10 THE BAILIFF: Yes, sir.

11 MR. FINNEGAN: I'm worried about --
12 with 26, I am going to put eight on. I guess
13 that's enough. Then you guys are going to have
14 ten. That's 18. That means I can only lose
15 eight.

16 Tiffany, why don't you call them and
17 ask them to put a few more on there.

18 THE CLERK: Okay.

19 THE COURT: Get 30, at least.

20 **(Pause in the proceedings.)**

21 **(Prospective jurors present.)**

22 THE COURT: Thank you, Mr. Barnes.

23 Are we all present and accounted for
24 here?

25 THE BAILIFF: Yes, Judge.

1 THE COURT: Twenty-six, okay.

2 Madam Clerk, swear the jury panel.

3 **(Prospective jurors sworn.)**

4 THE CLERK: Thank you.

5 You may be seated.

6 THE COURT: Well, good morning, ladies
7 and gentlemen.

8 ALL PROSPECTIVE JURORS: Good morning.

9 THE COURT: I'm James Lombardi. I'll
10 be the presiding judge at this trial, but before
11 we get started, I have some questions for you,
12 and these questions are not designed to pry into
13 your personal lives, but they're really to see
14 whether or not you have any conflicts of
15 interest in this case.

16 So if you have an affirmative response
17 to any of my questions, I want you to stand up,
18 and that's how you can identify yourself, and
19 then I might ask you a followup question.

20 Now, we know a little bit about you.
21 We have these jury sheets, and we know your
22 names, of course. We know your geographic area,
23 ages. We know your occupation and your marital
24 status. That's all we know. Sometimes we don't
25 get that on here. We're supposed to have your

1 spouse's occupation, too, if you have a spouse.

2 So let me check and see whether or not
3 we have anybody who's married and I don't have
4 their spouse's -- well, here's one. I don't
5 have the occupation for number 7. What's number
6 7 do? Where's 7?

7 THE BAILIFF: Please stand.

8 THE COURT: What do you do?

9 PROSPECTIVE JUROR 7: I used to work in
10 construction.

11 THE COURT: You're not working now?

12 PROSPECTIVE JUROR 7: The company shut
13 down, so...

14 THE COURT: I have you married, right?

15 PROSPECTIVE JUROR 7: Yeah, I was.

16 THE COURT: Oh, you're not married
17 anymore? Separated?

18 PROSPECTIVE JUROR 7: We are in the
19 process of divorce now.

20 THE COURT: Okay. You can sit down.

21 PROSPECTIVE JUROR 7: Thank you.

22 THE COURT: Number 15, what's your
23 occupation?

24 PROSPECTIVE JUROR 15: I'm retired.

25 THE COURT: Retired?

1 PROSPECTIVE JUROR 15: Yes.

2 THE COURT: What did you do before you
3 retired?

4 PROSPECTIVE JUROR 15: I worked as a
5 project coordinator for (inaudible) in the IT
6 department.

7 THE COURT: Okay. What about your
8 husband? Is he retired, too?

9 PROSPECTIVE JUROR 15: Yes.

10 THE COURT: You can sit.

11 And the last one, number 26, where are
12 you? Over here?

13 PROSPECTIVE JUROR 26: Right here.

14 THE COURT: Yeah. What's your
15 occupation?

16 PROSPECTIVE JUROR 26: Unemployed.

17 THE COURT: Unemployed? Okay, thank
18 you.

19 Anybody here not a U.S. citizen? No
20 affirmative responses.

21 Is anybody not a resident of Prince
22 George's County? No affirmative responses.

23 Do any of you know any other juror?
24 Take a look around and see if you know anybody
25 else on this prospective panel. No affirmative

1 responses.

2 Anybody here know the staff? We have a
3 Clerk here. We have a Bailiff. We have me.
4 Anybody know any of those people? No
5 affirmative responses.

6 All right. Now, a little bit about
7 this case. This case goes back to June the 6th
8 of 2014. Around 6:00, the plaintiff, whom I'll
9 introduce to you in a minute, was exiting a
10 business, and she fell down the outside steps,
11 and she filed suit because she sustained
12 damages. This happened right in front of the
13 offices known as the Brickyard Boulevard
14 community in Beltsville.

15 So on that limited description, does
16 anybody know anything about this case? No
17 affirmative responses.

18 Has anybody worked for or had any
19 contact with the Brickyard Boulevard community?
20 No affirmative responses there.

21 Well, let me introduce the plaintiff to
22 you, Ms. Mallard, or is it Mallard?

23 MS. MALLARD: Mallard.

24 THE COURT: Mallard? Stand up. Let
25 the jury take a look at you. Does anybody know

1 Ms. Mallard? No affirmative responses.

2 She is represented by Kevin Finnegan,
3 who's standing and looking at you --

4 MR. FINNEGAN: Good morning.

5 THE COURT: -- and his associate,
6 Joshua Sturman. Anybody know either of these
7 fellows? No affirmative responses.

8 They are in a firm called Goldberg &
9 Finnegan. Anybody have anything to do with that
10 law firm? No affirmative responses there.

11 The defendant is known as Creative
12 Landscapes by Gregory, Inc., located with their
13 corporate office in Frederick, Maryland, and
14 their representative today, since they're a
15 corporation, is Steven Kenel.

16 Mr. Kenel, let the jury take a look at
17 you. Does anybody know him? No affirmative
18 responses. Sit.

19 Or Creative Landscapes by Gregory,
20 Inc., either worked for them or contracted in
21 some way with them? No affirmative responses.

22 Their attorney is Frank Daily. Anybody
23 have anything --

24 MR. DAILY: Good morning.

25 THE COURT: -- to do with or know

1 ~Mr. Daily? No affirmative responses. Have a
2 seat.

3 Now, I'm going to name some witnesses.
4 I'm going to run through all these names, and
5 there's maybe a dozen and a half names here. If
6 you know any of these people whose names that I
7 mention, stand up, and then I'll get to you
8 after I finish reading off all of the names.
9 Some are lay witnesses. Some are expert
10 witnesses, like doctors, engineers, government
11 employees.

12 There's Antonio Mallard, we can imagine
13 who he is, Gilbert Brown, Rosalyn Felder, Kevin
14 Gilmore, Oscar Lopez, Oscar de Jesus Lopez,
15 Michael Karhumaa, who is with the permit office
16 with the county, and John Castagnola. They're
17 the lay witnesses.

18 Now, here's some doctors and expert
19 witnesses. Phillip -- oh, if you have been
20 treated by any of these doctors, had anything to
21 do with any of these engineers, that's all part
22 of my question, and then just stand up.

23 So there's Phillip Omohundro, who's an
24 orthopedic surgeon. There's Brett Chico, a
25 podiatrist. Herman Zarate, another podiatrist.

1 Joel Fechter, who's an orthopedic surgeon.
2 Bruce Neckritz, a physiatrist. Levi Pearson, a
3 pain management doctor. Edward Cohen, an
4 orthopedic surgeon. Cathryn Winslow is a life
5 planner. Gregory Harrison, a civil engineer.
6 James Schofield, also an engineer.

7 I thought that Bozeleri (phonetic) was
8 coming in here. He's not on this list. He's
9 not in here?

10 MR. FINNEGAN: No, sir.

11 THE COURT: I saw his name on some
12 pleadings.

13 MR. FINNEGAN: No, Your Honor.

14 THE COURT: Okay. Well, that's why
15 he's not on my list.

16 All right. No affirmative responses
17 for any of those names.

18 Well, you can see by the number of
19 names that I've called, this is going to be more
20 than a one-day trial. Now, the lawyers tell me
21 this trial is supposed to last four days.
22 Anybody have a problem with that, stand up and
23 tell me what the problem is, and let's try to
24 sort it out, a four-day trial. I'm going to
25 take you one at a time, so you just remain

1 standing after I finish up with you.

2 We are going to start with this fellow
3 right here. Give me your number so that I can
4 identify you on this jury list.

5 PROSPECTIVE JUROR 2: Number 2.

6 THE COURT: What's the problem?

7 PROSPECTIVE JUROR 2: I have prostate
8 cancer, and I have medical treatment every
9 Thursday, so I have --

10 THE COURT: Have what?

11 PROSPECTIVE JUROR 2: I have a medical
12 treatment this Thursday coming.

13 THE COURT: Right. Thank you.

14 Next?

15 PROSPECTIVE JUROR 4: Number 4.

16 THE COURT: Thank you.

17 PROSPECTIVE JUROR 4: I work at night,
18 overnight, from 10:00 to 6:00 in the morning,
19 and I'm really just tired.

20 THE COURT: Did you work last night?

21 PROSPECTIVE JUROR 4: Yes.

22 THE COURT: I don't want you falling
23 asleep on my jury now.

24 PROSPECTIVE JUROR 4: Exactly.

25 THE COURT: Ten to 6:00. So you

1 came --

2 PROSPECTIVE JUROR 4: -- straight from
3 work here.

4 THE COURT: -- got a little breakfast
5 and then came over here, huh?

6 PROSPECTIVE JUROR 4: Yes, sir.

7 THE COURT: Well, if it will help any,
8 I'll usually start the next three days at 10:00.
9 You won't have to come in quite so early as you
10 did today, but I'll keep that in mind.

11 PROSPECTIVE JUROR 4: Thank you.

12 THE COURT: You bet.

13 PROSPECTIVE JUROR 6: Juror 6. I have
14 a grandson that I -- that's in my care that I
15 have to pick up from school. My job, I'm off
16 Monday and Tuesday, and then the next three
17 days, I would have to put in notice real soon if
18 I'm going to be on the jury.

19 THE COURT: What kind of job do you
20 have? I see you're in transportation of some
21 sort.

22 PROSPECTIVE JUROR 6: Transit. Yes,
23 Metro Access.

24 THE COURT: What?

25 PROSPECTIVE JUROR 6: Metro Access.

1 THE COURT: Oh, yeah? What do you do?
2 Oh, you take handicapped people back and forth,
3 don't you?

4 PROSPECTIVE JUROR 6: I transport
5 handicapped, yes. Twelve hours a day, yes.

6 THE COURT: Wow. And then you take
7 care of your grandson as well?

8 PROSPECTIVE JUROR 6: Yes, sir.

9 THE COURT: You're a caregiver.

10 PROSPECTIVE JUROR 6: Yes, sir.

11 THE COURT: I hear you. Have a seat.
12 Next?

13 PROSPECTIVE JUROR 7: Number 7. I had
14 an accident last -- two weeks ago. I have to go
15 to therapy, so I didn't go today because I have
16 to come here.

17 THE COURT: What, do you have physical
18 therapy?

19 PROSPECTIVE JUROR 7: Yes.

20 THE COURT: Every so often? How often?

21 PROSPECTIVE JUROR 7: Every Monday,
22 Wednesday, Friday, and also my son just came
23 home from back home, is here now, so I have to
24 take him to the school --

25 THE COURT: What time is your therapy

1 appointment?

2 PROSPECTIVE JUROR 7: It's in the
3 morning.

4 THE COURT: Yeah?

5 PROSPECTIVE JUROR 7: 8:30 in the
6 morning.

7 THE COURT: You know, I noticed that I
8 forgot to find out what your occupation was.
9 Did I ask you that?

10 PROSPECTIVE JUROR 7: Yes, you did. So
11 I said I used to work in --

12 THE COURT: You were in construction
13 and you lost your job, right?

14 PROSPECTIVE JUROR 7: Yes.

15 THE COURT: Okay, gotcha.

16 Who's next?

17 PROSPECTIVE JUROR 8: Juror number 8.

18 THE COURT: Go ahead.

19 PROSPECTIVE JUROR 8: I'm a caregiver
20 for my 95-year-old mother-in-law.

21 THE COURT: Who's watching her today?

22 PROSPECTIVE JUROR 8: We have a -- I
23 normally give her breakfast in the morning, and
24 I go to work, and I had put in for my office so
25 I could come in around 10:00.

1 THE COURT: Really?

2 PROSPECTIVE JUROR 8: So I normally
3 give her breakfast in the morning. We have a
4 caregiver that comes in at 11:00 and stays with
5 her until 3:00. Then my wife comes home and
6 gives her dinner, and we share the duties with
7 her.

8 THE COURT: All right, thanks.

9 Yes?

10 PROSPECTIVE JUROR 9: Juror number 9.
11 I'm also a caregiver to my mother. Thursdays
12 are her doctor's days, but she has a procedure
13 to do Thursday morning.

14 THE COURT: All right.

15 Next?

16 PROSPECTIVE JUROR 10: Juror 10. I'm a
17 single mother and the sole provider for my
18 daughter.

19 THE COURT: Where do you work?

20 PROSPECTIVE JUROR 10: In Bethesda,
21 National Institutes of Health.

22 THE COURT: Over here -- oh, I'm sorry,
23 back here.

24 PROSPECTIVE JUROR 11: Sorry. I'm
25 Juror 11. I'm actually available. I just have

1 a quick question. Will we be given a proper
2 documentation, of course, if we're missing work?

3 THE COURT: Anything you want --

4 PROSPECTIVE JUROR 11: Oh, okay.

5 THE COURT: -- for your employer, yep,
6 including a big check for, what -- what do they
7 get, 45 -- 15 bucks now? You know, I think they
8 changed it if you're here for more than four --
9 more than three days or four days?

10 THE CLERK: Five.

11 THE COURT: What is it, five? We can
12 make it go five if you want. All right.

13 And the next lady?

14 PROSPECTIVE JUROR 14: Juror number 14.
15 I have a relative's funeral tomorrow.

16 THE COURT: How -- who is it?

17 PROSPECTIVE JUROR 14: It's my cousin.

18 THE COURT: Where? Where is your
19 funeral?

20 PROSPECTIVE JUROR 14: In Southeast
21 Washington.

22 THE COURT: Okay.

23 All right, now on this side.

24 PROSPECTIVE JUROR 26: I'm June 26 --
25 sorry, I mean --

1 THE COURT: That's okay. You can talk,
2 26. Go ahead.

3 PROSPECTIVE JUROR 26: I'm taking care
4 of my mother. She has stage five of cancer, and
5 right now my next-door neighbor is watching her
6 while I'm down here.

7 THE COURT: All right.
8 And the last juror standing?

9 PROSPECTIVE JUROR 24: Juror 24.

10 THE COURT: What?

11 PROSPECTIVE JUROR 24: Juror 24.

12 THE COURT: Twenty-four, okay, gotcha.

13 PROSPECTIVE JUROR 24: And it's just
14 I'm scheduled for work Tuesday and Thursday.
15 I'd hoped they would be very understanding about
16 that but just wanted to make sure I was being
17 honest with the Court if I had to miss.

18 THE COURT: What -- do you work for a
19 restaurant?

20 PROSPECTIVE JUROR 24: Yes.

21 THE COURT: What's the restaurant?

22 PROSPECTIVE JUROR 24: Chik-Fil-A.

23 THE COURT: Chik-Fil-A?

24 PROSPECTIVE JUROR 24: Yeah. I
25 wouldn't think it would normally be an issue,

1 but they have had problems with people not
2 showing up lately, and they've been cracking
3 down on people.

4 THE COURT: Do they pay for jury duty?
5 Some do. Some of the companies do.

6 PROSPECTIVE JUROR 24: I don't -- not
7 that I know of.

8 THE COURT: Not Chik-Fil-A? All right.
9 Have a seat.

10 All right, now some other questions.
11 Any of you of made a claim for personal injury,
12 slip and fall, workers' comp, any accident of
13 any kind, auto accident?

14 Stand up and I'm going to sort it out
15 and find out a little bit about you. And also,
16 I want you to tell me what part of your body was
17 injured and if it was an accident, starting with
18 you.

19 Now, remember, I need that number.

20 PROSPECTIVE JUROR 1: One.

21 THE COURT: Number 1? Yeah, a little
22 bit about it.

23 PROSPECTIVE JUROR 1: I hurt my back,
24 my neck, my back, here (indicating), and my
25 knee --

1 THE COURT: Sprain? No fractures?

2 Soft tissue -- what we call soft tissue?

3 PROSPECTIVE JUROR 1: Just pain in the
4 back, the neck and back and my --

5 THE COURT: Okay. Auto accident?

6 PROSPECTIVE JUROR 1: Auto accident.

7 THE COURT: Would that affect your
8 ability to be fair here? This is not an auto
9 accident case. This is something else, as I
10 told you. This involves a fall.

11 PROSPECTIVE JUROR 1: (Inaudible).

12 THE COURT: What?

13 PROSPECTIVE JUROR 1: (Inaudible) case,
14 my beliefs changed, once I'm in this issue of --

15 THE COURT: Well, I know you've got a
16 medical treatment, and it's Thursday, isn't it?
17 Are you -- you are number -- oh, no, you are
18 number 1. I'm sorry. So you're a security
19 guard?

20 PROSPECTIVE JUROR 1: Um-hum, yeah.

21 THE COURT: So you're working.

22 PROSPECTIVE JUROR 1: I'm working now.

23 THE COURT: Okay. Can you be fair?

24 That's the -- what this is all about.

25 PROSPECTIVE JUROR 1: I mean, my

1 beliefs, like, once this happened like that to
2 my -- like to -- employee or wherever, I believe
3 people should have the right to get whatever
4 they need. I mean, care in term of --

5 THE COURT: Okay. All I want to know
6 is, can you be fair to both parties? You are
7 going to hear evidence.

8 PROSPECTIVE JUROR 1: I mean, I --

9 THE COURT: Can you -- can you be fair
10 and impartial?

11 PROSPECTIVE JUROR 1: I mean, for the
12 most part, I wanted to be rewarded for what
13 happened to me, I mean the -- the insurance
14 company -- back then when I have (inaudible),
15 they try to deny it --

16 THE COURT: I don't -- maybe I'm
17 missing what you're trying to tell me.

18 PROSPECTIVE JUROR 1: They try to
19 deny -- okay.

20 THE COURT: It's a yes or no question,
21 isn't it?

22 PROSPECTIVE JUROR 1: Okay.

23 THE COURT: Yes or no?

24 PROSPECTIVE JUROR 1: No.

25 THE COURT: You can't be fair? I want

1 to know why. Now, tell me why you can't be fair
2 just because --

3 PROSPECTIVE JUROR 1: Well, I
4 believe -- I mean, if the plaintiff was rewarded
5 for what happened to him or her --

6 THE COURT: It's a her. It's this lady
7 right here. You can't be fair to her because
8 you were in an auto accident?

9 PROSPECTIVE JUROR 1: I mean, it's just
10 my belief, because the whole case went...

11 THE COURT: Sit down.

12 Next?

13 PROSPECTIVE JUROR 6: Number 6.

14 THE COURT: Number what?

15 PROSPECTIVE JUROR 6: I'm Juror number
16 6.

17 THE COURT: Yeah, I gotcha.

18 PROSPECTIVE JUROR 6: Okay. Back in
19 1993, I was in the construction trade. I fell
20 three stories off a scaffold.

21 THE COURT: Workers' comp?

22 PROSPECTIVE JUROR 6: Workers' comp.

23 THE COURT: Are you okay on this case?

24 PROSPECTIVE JUROR 6: Ah, maybe.

25 THE COURT: Well, can you be fair and

1 impartial? That's my question.

2 PROSPECTIVE JUROR 6: Yes, I probably
3 could.

4 THE COURT: Okay, thank you.

5 Next?

6 PROSPECTIVE JUROR 12: I'm number 12.

7 THE BAILIFF: No, no, she is, the one
8 on the end.

9 PROSPECTIVE JUROR: No, he can go
10 ahead.

11 THE BAILIFF: No, in order, please.

12 THE COURT: It doesn't matter.

13 Whoever's talking first is fine. Go ahead, 12.

14 PROSPECTIVE JUROR 9: I'm juror number
15 9.

16 THE COURT: Nine is okay, too.

17 PROSPECTIVE JUROR 9: Auto accident two
18 years ago. Someone hit me from behind, back
19 injury. I'm fair. I'm good.

20 THE COURT: Okay.

21 And now you.

22 THE BAILIFF: Pardon. Number 12,
23 please.

24 PROSPECTIVE JUROR 12: I was in an auto
25 accident in '93. My chest was crushed. The

1 person who caused the accident ran the red light
2 while I was going through it green. It turned
3 out he didn't have insurance, so my insurance
4 company and I took him to court.

5 THE COURT: Okay. When did this
6 happen? It was a while ago, right?

7 PROSPECTIVE JUROR 12: About '93.

8 THE COURT: Yeah, right. I thought you
9 said that. Can you be fair in this case if
10 you're picked?

11 PROSPECTIVE JUROR 12: I presume so,
12 only that, you know, I think like everyone else
13 who's talking about this that we're a little
14 concerned that we might tend to find for a
15 person who was hurt, but, yeah, I think I can be
16 fair. I mean, I'm being as honest as I can
17 about that, too.

18 THE COURT: Next?

19 PROSPECTIVE JUROR 14: Juror number 14.
20 I fell at work, didn't make a claim, just made
21 notes to my supervisor that I had the accident,
22 and that was as far as it went.

23 THE COURT: Can you be fair?

24 PROSPECTIVE JUROR 14: Yes.

25 PROSPECTIVE JUROR 16: Juror number 16.

1 I did have a fall at work, did report it, but no
2 claim, and I also had a car accident years ago.

3 THE COURT: What part of your body?

4 PROSPECTIVE JUROR 16: Lower back, and
5 I have back issues for life.'

6 THE COURT: Do you think you could be
7 fair in this case if you're picked?

8 PROSPECTIVE JUROR 16: Um-hum.

9 THE COURT: You have to say yes or no.

10 PROSPECTIVE JUROR 16: Yes.

11 THE COURT: All right.

12 Over here?

13 PROSPECTIVE JUROR 21: I'm number 21.

14 THE COURT: All right.

15 PROSPECTIVE JUROR 21: In 2006, I filed
16 a claim on my daughter's behalf. Her fingertip
17 was amputated in Prince George's County Public
18 Schools. And, yes, I can be fair.

19 THE COURT: All right, thank you.

20 PROSPECTIVE JUROR 25: Juror 25. I was
21 in a car accident a while back.

22 THE COURT: Can you handle this case
23 fairly if you're picked? What's the last grade
24 you went to in school?

25 PROSPECTIVE JUROR 25: Bachelor's.

1 THE COURT: Where?

2 PROSPECTIVE JUROR 25: Bachelor's.

3 THE COURT: Master's degree? Thank
4 you.

5 Well, speaking of anatomy, the parts of
6 anatomy that the plaintiff is complaining about
7 in this case -- most of you have already
8 answered this question, at least the people that
9 stood up -- but foot, ankle -- ankle was
10 fractured -- knee, hip, or wrists.

11 So other than the people who have
12 already answered this question, have any others
13 of you here who haven't answered this question
14 about the parts of your anatomy that have been
15 injured, anybody else have issues with any of
16 those parts that I just read?

17 Go ahead, stand up. I'll take you
18 first because I saw you. Go ahead.

19 PROSPECTIVE JUROR 22: Number 22.

20 THE COURT: Yeah.

21 PROSPECTIVE JUROR 22: I was born with
22 club feet, so I suffer from deformity of my
23 feet.

24 THE COURT: Sure.

25 PROSPECTIVE JUROR 22: I have

1 tendinitis, arthritis, torn ligaments in both of
2 my feet.

3 THE COURT: That's all caused by the
4 congenital problem?

5 PROSPECTIVE JUROR 22: Um-hum, yes.

6 THE COURT: Can you be fair here?

7 PROSPECTIVE JUROR 22: Yes.

8 THE COURT: Thank you.

9 Yes, ma'am?

10 PROSPECTIVE JUROR 11: Juror number 11.
11 I have had two injuries to my ankle, one playing
12 basketball in high school, the other
13 skateboarding. I tore two out of the three
14 ligaments, had to get MRIs, et cetera.

15 THE COURT: Ouch.

16 PROSPECTIVE JUROR 11: I can totally be
17 fair.

18 THE COURT: Thanks.

19 Any of you ever been employed as a
20 building inspector or a government inspector?
21 No affirmative responses.

22 Anybody here an engineer or employed by
23 an engineer or worked in that field of
24 engineering? And I'm talking civil, mechanical,
25 electrical engineering.

1 PROSPECTIVE JUROR: Just computer
2 engineering.

3 THE COURT: I need your number.

4 PROSPECTIVE JUROR 12: Number 12, I'm
5 sorry. Just computer engineering, not
6 mechanical or --

7 THE COURT: And you're number 12,
8 right?

9 PROSPECTIVE JUROR 12: Number 12.

10 THE COURT: All right. Are you okay on
11 this case so far? Sit, sit, sit.

12 PROSPECTIVE JUROR 12: As far as I
13 know, not knowing any details.

14 THE COURT: Right. I know you, sir,
15 are leaning -- I heard your statement before.
16 Have a seat.

17 PROSPECTIVE JUROR 19: Number 19. Sir,
18 I'm a clinical engineer.

19 THE COURT: There you go.

20 PROSPECTIVE JUROR 19: I usually work
21 with we'll say life support systems, sir.

22 THE COURT: All right. Can you be fair
23 in this case if you're picked?

24 PROSPECTIVE JUROR 19: Yes, sir.

25 THE COURT: All right.

1 Anybody ever been diagnosed with a
2 regional pain syndrome? No affirmative
3 responses.

4 Or any nervous disorder, other than the
5 people that have already spoken? The same
6 number, 12?

7 PROSPECTIVE JUROR 12: Number 12, yeah.

8 THE COURT: And what's your problem?

9 PROSPECTIVE JUROR 12: I have a pretty
10 serious medical condition that kind of keeps me
11 working at home. I've got chronic fatigue
12 syndrome and a few other conditions that are
13 involved, but I don't see where --

14 THE COURT: Involves the nervous
15 system?

16 PROSPECTIVE JUROR 12: Yes, it
17 involves -- it involves --

18 THE COURT: I hear you.

19 PROSPECTIVE JUROR 12: -- pain in the
20 nervous system and a lot of other problems.

21 THE COURT: Okay, all right. Thank
22 you.

23 PROSPECTIVE JUROR: Same thing, nerves
24 in my system.

25 THE COURT: And what's your number?

1 PROSPECTIVE JUROR 16: Nineteen, sir --

2 I'm sorry, 16.

3 THE COURT: What is it?

4 PROSPECTIVE JUROR 16: Sixteen. Sorry.

5 THE COURT: Okay. What did you want to
6 tell me?

7 PROSPECTIVE JUROR 16: I had -- who,
8 me?

9 THE COURT: Yes, you.

10 PROSPECTIVE JUROR 16: I have neuro --
11 it's my nerves.

12 THE COURT: It's your nerves?

13 PROSPECTIVE JUROR 16: Yeah. I have
14 pinched nerves.

15 THE COURT: This is from the basketball
16 injury?

17 PROSPECTIVE JUROR 16: No, the car
18 accident.

19 THE COURT: So something -- the car
20 accident?

21 PROSPECTIVE JUROR 16: No, the car
22 accident.

23 THE COURT: Okay, the car accident.
24 Are you still okay on this case?

25 PROSPECTIVE JUROR 16: Yeah.

1 THE COURT: All right. What about you?
2 Number?

3 PROSPECTIVE JUROR 6: Number 6. From
4 my injury in '93, I had surgery on my neck, and
5 I got nerve damage, and I have tingling in my
6 hands all the time.

7 THE COURT: You have tingling now,
8 neuropathy, sort of?

9 PROSPECTIVE JUROR 6: When I sit a long
10 time, I'll tingle.

11 THE COURT: Yeah, all right.

12 PROSPECTIVE JUROR 7: Number 7.

13 THE COURT: Go ahead.

14 PROSPECTIVE JUROR 7: Nineteen years
15 ago I had a surgery on my (inaudible), but now,
16 after the accident I have, I got a pain in my
17 whole hips, right here (indicating). I can't
18 stand too much. I can't sit down too much,
19 so...

20 THE COURT: All right. When you stand
21 up, does that help you, standing up?

22 PROSPECTIVE JUROR 7: When I stand up,
23 I can walk a little bit, but after that, I can
24 feel the pain come here (indicating) to here
25 (indicating).

1 THE COURT: All right. Do you think
2 that would affect your ability to sit for 90
3 minutes?

4 PROSPECTIVE JUROR 7: Right now, I'm --

5 THE COURT: I usually go about 90
6 minutes before taking a break, but I do let my
7 jurors stand up in their -- in place. Do you
8 think that would help you?

9 PROSPECTIVE JUROR 7: Yeah.

10 THE COURT: All right. Have a seat.
11 Anybody ever worked for a landscaping
12 company?

13 Yes?

14 PROSPECTIVE JUROR 6: Number 6. Yes,
15 sir. My brother-in-law used to run a
16 landscaping, and I did it all.

17 THE COURT: You did some work for him?

18 PROSPECTIVE JUROR 6: Yes, sir.

19 THE COURT: How long ago?

20 PROSPECTIVE JUROR 6: That was in the
21 , eighties.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR 6: Yes, sir.

24 THE COURT: All right.

25 PROSPECTIVE JUROR 12: Number 12. I

1 also worked in landscaping back in the eighties,
2 a long time ago, after high school.

3 THE COURT: Any of you have any
4 preconceived notions or feelings about anybody
5 that brings a lawsuit? No affirmative
6 responses.

7 Everybody think -- does anybody not
8 think that people have a right to go to court
9 and make a claim if they think they've been
10 injured or wronged in some way? No affirmative
11 responses.

12 Anybody think that a corporation isn't
13 entitled to the same deliberation and fairness
14 as a layperson? No affirmative responses there,
15 I think. Yeah? Oh, I thought I heard somebody.

16 All right. Plaintiff okay with these
17 instructions? Well, let's put it this way. I'm
18 going to ask one more question. I've asked a
19 number of them.

20 Is there anybody here that has an issue
21 with this case on some particular issue that I
22 haven't talked to you about? It may be a
23 personal, intimate kind of an issue, which I
24 would be happy to take right here at the Bench
25 or from where you sit, something that I haven't

1 brought up or thought of? No affirmative
2 responses.

3 I do have one question about -- I guess
4 it's sort of a religious question. Does anybody
5 have any problem with making -- sitting and
6 making a judgment, because that's what a jury is
7 going to do, is you're going to make a judgment.
8 I understand there's one or two religions that
9 don't believe you should judge others. If any
10 of you feel that way, you should tell me about
11 it. All right, no affirmative responses.

12 Plaintiff, you're okay with these
13 questions?

14 MR. FINNEGAN: Your Honor, may we
15 approach about --

16 THE COURT: All right, go ahead.

17 **(At the bench.)**

18 MR. FINNEGAN: For the witness list,
19 and this is on the -- this is my fault,
20 number -- well, letter F is supposed to say
21 Oscar Cruz, and it says Oscar Lopez. I got that
22 wrong, so --

23 THE COURT: Oscar Cruz?

24 MR. FINNEGAN: Yeah.

25 MR. DAILY: That's correct.

1 MR. FINNEGAN: He will testify, so we
2 should probably ask about him.

3 THE COURT: Okay.

4 MR. FINNEGAN: Also, I see here a
5 number of people on the list that --

6 THE COURT: There's what?

7 MR. FINNEGAN: There's a number of
8 people on the list that are employed in the
9 legal field. One is -- one identifies himself
10 as a lawyer, and the other person says they're a
11 legal assistant. So if I could ask for Number
12 10 of the plaintiff's *voir dire* be asked so we
13 can find out a little bit about them, or some
14 version of Number 10.

15 THE COURT: Number 10 I have is a
16 management analyst.

17 MR. FINNEGAN: On the plaintiff's?

18 THE COURT: Huh?

19 MR. FINNEGAN: Oh, no, I'm sorry,
20 you're looking at the list. No, I was looking
21 at my *voir dire* questions, if Your Honor could
22 ask that Number 10, because I think it will --

23 THE COURT: I don't usually ask
24 questions about the law. I might ask -- did I
25 ask about medicine?

1 MR. FINNEGAN: No.

2 THE COURT: I didn't? I'll ask about
3 that but not about the law.

4 MR. FINNEGAN: Well, Your Honor, the
5 reason I'm asking is because number 20
6 identifies himself as an attorney --

7 THE COURT: Twenty does?

8 MR. FINNEGAN: Yeah, and number 21
9 identifies herself as a legal assistant. I
10 would just want to know what kind of work they
11 do. Do they do injury work on either side?

12 THE COURT: Twenty, 21?

13 MR. FINNEGAN: Right.

14 THE COURT: I'll ask it generally. I'm
15 not going to probe into all the work they do.

16 MR. FINNEGAN: Can we find out whether
17 they do injury litigation?

18 THE COURT: No. I'll ask them if
19 anybody here is an attorney or works in a legal
20 office, period.

21 MR. FINNEGAN: Okay.

22 THE COURT: We already know there's two
23 of them.

24 MR. FINNEGAN: Yeah. And I thought
25 that --

1 THE COURT: The medical one, I will ask
2 the same question, generally.

3 MR. FINNEGAN: I thought that Your
4 Honor was going to ask Number 16 of the
5 plaintiff's *voir dire*, which is about if
6 anyone's ever worked as a builder.

7 THE COURT: Oh, the residential or
8 commercial -- yeah, I did mean to ask that.

9 MR. FINNEGAN: And then 19, since
10 someone from Lennar is going to be testifying --

11 THE COURT: Oh, yeah, I meant to -- I
12 meant to ask that.

13 MR. FINNEGAN: Okay.

14 THE COURT: You're right.

15 MR. FINNEGAN: I think that's all I
16 have.

17 THE COURT: How are you doing?

18 MR. DAILY: Good, Your Honor. I'm
19 doing fine. Do you wait until the end for
20 motions to strike for cause?

21 THE COURT: Yeah, you know, see, that's
22 why I wanted more jurors here. I mean, that
23 number 12's got to go. He's all over the place
24 (inaudible), and then there are a couple of them
25 that I am going to get rid of because they have

1 doctors' appointments. I don't know, we're
2 not -- we're not going to have enough.

3 If you guys have your ten strikes and
4 are putting eight on the jury, that only leaves
5 six, which only leaves eight, so we'll see. We
6 might have to reduce your strikes. Anyway,
7 we'll see. That's why I'm trying to get four
8 more, but they've said that we have to wait
9 for -- we may never get this case started.

10 I mean, that lady's got to go to the
11 funeral. How can you not let her go? I mean, I
12 can tell you which ones. It's pretty obvious
13 which ones have to go. These people have
14 medical appointments. This one guy, number 1 --

15 MR. DAILY: Yeah, he couldn't say.

16 THE COURT: -- he's got to go.

17 MR. DAILY: Yeah.

18 MR. FINNEGAN: Um-hum.

19 THE COURT: So, yeah, that's two
20 without even looking, three really.

21 MR. DAILY: Number 2 has prostate
22 cancer.

23 THE COURT: Hmm?

24 MR. DAILY: Number 2 has prostate
25 cancer.

1 THE COURT: Yeah, and he's in --

2 MR. DAILY: Treatment.

3 THE COURT: -- meds for --

4 MR. FINNEGAN: Number 3 indicates he
5 lives in Silver Spring, which as far as I know
6 isn't in Prince George's County. I wanted to
7 see if there was any question that could be
8 asked about that, but --

9 THE COURT: God, I hate to ask. You
10 know, maybe he's moved. I've already asked them
11 if they were a resident, so I'm not going to do
12 it. I'm afraid of the answer.

13 And there was a guy doing PT Monday,
14 Wednesday, Friday (inaudible), but --

15 MR. DAILY: That's number 7.

16 THE COURT: Yeah, 7. He said he could
17 be fair. I don't know. What I may do is put
18 some of them at the bottom of the list, you
19 know, just move them around.

20 MR. DAILY: Number 8 and 9 were
21 caregivers.

22 THE COURT: The caregivers, no, I'm
23 not -- I may just move them. The lady that's
24 got a funeral, though, I've got to -- she's got
25 to go. That's number 14.

1 What do I have for number 24? Oh, this
2 is the guy that's working for Chik-Fil-A.

3 MR. DAILY: He'll be okay.

4 THE COURT: He's already (inaudible).
5 Well, I see at least three. So we'll see where
6 we are.

7 MR. FINNEGAN: Should we come back up
8 here after you go through these last ones?

9 THE COURT: I don't know why. That's
10 why we did it now. Why do you have to come
11 back?

12 MR. FINNEGAN: Okay, all right.

13 THE COURT: Have a seat.

14 MR. DAILY: Your Honor, while we're
15 here, I just want to say, if you don't want us
16 to come back up, I would make a motion for cause
17 as to number 1 and number 12 --

18 THE COURT: Oh, number 1 is gone. I
19 have 1 down. Three is gone and 14. I'll have
20 to take a second look. Now, this guy, number 2,
21 says he's getting treatment on Thursday, so I
22 really meant to put down 2, not --

23 MR. FINNEGAN: Not 3?

24 THE COURT: -- 3, yeah. So 2 is --
25 they are going to go.

1 MR. DAILY: And probably number 12?

2 THE COURT: Twelve is gone, absolutely.

3 So that's four.

4 MR. FINNEGAN: And 14 is the funeral?

5 THE COURT: What's my -- what are

6 you...

7 **(Off-mic conversation.)**

8 THE COURT: If there's anybody else,

9 tell me about it now. There's four that I'm

10 going to excuse. Some I'll move to the bottom.

11 The caregivers are going to the bottom.

12 MR. DAILY: Are going to go to the

13 bottom? Okay.

14 THE COURT: Yeah.

15 MR. FINNEGAN: So which numbers are

16 those?

17 THE COURT: One, 2, 12, and 14, so far.

18 MR. DAILY: Those are being stricken,

19 aren't they?

20 THE COURT: I'm going to strike them.

21 MR. DAILY: Yeah, yeah.

22 THE COURT: Let them go, so you don't

23 have to worry about them. And 7 is going to the

24 bottom, that's the guy with the pain in his hip.

25 MR. DAILY: Seven, 8, and 9?

1 THE COURT: Seven -- the caregivers,
2 yes. Seven, 8, and 9 go to the bottom.

3 MR. DAILY: Yeah.

4 THE COURT: So after -- I'll tell you
5 what, let's do this. After -- after your
6 strikes, when I see your strikes, we'll see
7 who's left, and then I might take a second look
8 at (inaudible)'s number. This guy has got
9 physical therapy Monday, Wednesday, Friday.
10 That's a questionable one.

11 MR. FINNEGAN: That was what, number 7?

12 MR. DAILY: Seven.

13 MR. FINNEGAN: Yeah.

14 THE COURT: Number 7, I am going to put
15 a question mark for that. I have --

16 MR. FINNEGAN: Oh, what about
17 (inaudible)? She's number 4.

18 THE COURT: Oh, yes, 6:00 to 10:00,
19 here it is -- or 10:00 to 6:00, yeah. I'm going
20 to move her to the bottom.

21 MR. DAILY: Okay.

22 THE COURT: Well, I'll tell you later,
23 see where we -- we struck four, and then the --
24 I'm worried about 7. I may -- I may let 7 go.
25 This is the guy who lost his job. He's bouncing

1 up and down. I think we'll have room to let him
2 go. So 7 I'll excuse.

3 So that's 1, 2, 7, and now we're at --
4 1, 2, 7, 12, and 14. That's five that I'm going
5 to excuse here for reasons that they explained
6 in the *voir dire*. And then so far I've moved 4,
7 8, 9 to the bottom.

8 Do you have anything else? Are there
9 any other caregivers?

10 MR. FINNEGAN: (Inaudible).

11 THE COURT: Well, number 10 is just a
12 single mom.

13 MR. FINNEGAN: Yeah, yeah.

14 THE COURT: I didn't see anybody else.
15 Even the rest of them are all (inaudible), okay?

16 MR. FINNEGAN: Sure.

17 THE COURT: Do you have anything?

18 MR. FINNEGAN: Just the questions.

19 THE COURT: Yeah, I am going to ask
20 those right now.

21 MR. FINNEGAN: Nothing else, Your
22 Honor. Thank you.

23 THE COURT: Okay, sure.

24 (In open court.)

25 THE COURT: All right. Ladies and

1 gentlemen, the lawyers have asked me to ask a
2 couple of questions that I may have missed, and
3 these are the questions.

4 You may hear a reference made to a home
5 building firm called Lennar Homes, Calatlantic
6 Homes, and Ryland Homes. I think they're the
7 owners of this place of business where this
8 happened. Anybody work for them, contacted by
9 them or is connected with any of those -- I saw
10 one corporation -- Lennar Homes, Calatlantic
11 Homes, and Ryland Homes? No affirmative
12 responses.

13 Has anybody ever worked here or dealt
14 with residential and commercial builders, like,
15 you know, you could be a supplier or something?
16 Commercial or residential builders?

17 Yes, stand up, and let me see what you
18 did, starting with you.

19 PROSPECTIVE JUROR 2: Juror number 2.
20 First Baptist Church of Highland Park.

21 THE COURT: Do what?

22 PROSPECTIVE JUROR 2: For First Baptist
23 Church of Highland Park, I'm the program manager
24 of our new worship center.

25 THE COURT: Oh, okay.

1 PROSPECTIVE JUROR 2: And I work with
2 about 50 or so contractors on different things.

3 THE COURT: Right. So far you're okay
4 with this case?

5 PROSPECTIVE JUROR 2: I am okay with
6 this case.

7 THE COURT: And what about you, number?

8 PROSPECTIVE JUROR 8: I've been a
9 building maintenance engineer for the last 40
10 years. So I manage a condominium in Southwest
11 Washington, D.C.

12 THE COURT: I see. So does that bother
13 you on this case in any way?

14 PROSPECTIVE JUROR 8: It doesn't bother
15 me on this case. I just have double --

16 THE COURT: Well, you are just
17 answering my question. I just want to know if
18 it's going to affect your ability to be fair.

19 PROSPECTIVE JUROR 8: No, it wouldn't
20 affect my ability to be fair.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR 8: But I need to get
23 back to my job.

24 THE COURT: Well, that's another issue.
25 Yeah, I know about that issue.

1 What number were you? You're 8?

2 PROSPECTIVE JUROR 8. Number 8, yeah.

3 THE COURT: Eight, yeah. I think I was
4 going to move you to the bottom of the list,
5 because I'm running out of jurors, but I have
6 you in mind. See, the lawyers are going to pick
7 the jury from the top, so I've got you at the
8 bottom right now, trying to move you around.
9 I'm thinking about you.

10 How about you?

11 PROSPECTIVE JUROR 9: Juror number 9.
12 I'm a content editor, but we -- the company that
13 I'm working for, we work with home building
14 associations. I work with two of them on a
15 weekly basis doing advertising and doing
16 editorial content for them.

17 THE COURT: All right. And will that
18 affect your ability --

19 PROSPECTIVE JUROR 9: No.

20 THE COURT: -- here to -- thank you.

21 And you, ma'am or sir?

22 PROSPECTIVE JUROR: I work for a
23 biomedical company --

24 THE COURT: What's the number?

25 PROSPECTIVE JUROR 19: Sorry. Number

1 19, sir.

2 THE COURT: I gotcha.

3 PROSPECTIVE JUROR 19: I work for a
4 company that handles building medical facilities
5 in the Washington, D.C., area, so I deal with a
6 lot of engineers, contractors, mostly on
7 hospital or outpatient basis.

8 THE COURT: Okay. And are you all
9 right on this case if you're chosen?

10 PROSPECTIVE JUROR 19: Yes, sir. I'm
11 okay with it.

12 THE COURT: Okay, thank you.

13 Anybody -- oh, another one? A late
14 arrival. What's your number?

15 PROSPECTIVE JUROR 6: Number 6, sir.

16 THE COURT: Number 6?

17 PROSPECTIVE JUROR 6: When you were
18 speaking of construction, in the eighties and
19 the nineties, I worked for many builders doing
20 my trade, so did you mean that, too?

21 THE COURT: Worked for who? What?

22 PROSPECTIVE JUROR 6: In the eighties
23 and the nineties (inaudible), I worked for many
24 contractors.

25 THE COURT: I see.

1 PROSPECTIVE JUROR 6: So I have a --

2 THE COURT: Well, the fact that you
3 worked for these contractors, will that affect
4 your ability to hear this case?

5 PROSPECTIVE JUROR 6: It shouldn't.

6 THE COURT: All right.

7 Anybody here have any -- I'm sorry I
8 didn't get that question out quicker.

9 What do you want to say?

10 PROSPECTIVE JUROR 7: Number 7. Number
11 7. I used to work for --

12 THE COURT: Number what?

13 PROSPECTIVE JUROR 7: Number 7 -- for
14 the company --

15 THE COURT: Seven, I am going to excuse
16 you. You got so many issues in this case, I'm
17 going to send you back to the jury room. Sit
18 down.

19 PROSPECTIVE JUROR 7: Ah, okay.

20 THE COURT: You don't have to tell me
21 anymore.

22 Anybody -- I know I have your job --
23 your occupations here on the jury sheet, but I
24 am going to ask you, anybody work for a lawyer
25 or a legal profession?

1 Starting with you.

2 PROSPECTIVE JUROR 3: Number 3.

3 THE COURT: Yes.

4 PROSPECTIVE JUROR 3: I work with the

5 lawyers, but they are in immigration field.

6 THE COURT: Immigration? Thank you.

7 You're okay on this case?

8 PROSPECTIVE JUROR 3: Yes.

9 THE COURT: Thanks.

10 How about you?

11 PROSPECTIVE JUROR: I also work for an

12 immigration law firm.

13 THE COURT: You do?

14 PROSPECTIVE JUROR: I do.

15 THE COURT: You must be very busy.

16 PROSPECTIVE JUROR: Indeed. I am juror

17 number 21.

18 THE COURT: Okay, thank you. Are you

19 all right here so far?

20 PROSPECTIVE JUROR 21: Absolutely.

21 THE COURT: Okay.

22 Ma'am?

23 PROSPECTIVE JUROR 20: Juror 20. I

24 work for the VFW on veterans disability benefits

25 cases.

1 THE COURT: Okay. You deal with cases
2 like this on, you know, all those body parts? I
3 guess one of them or two must have come up.

4 PROSPECTIVE JUROR 20: Yes.

5 THE COURT: But are you still all right
6 on this case?

7 PROSPECTIVE JUROR 20: Yes.

8 THE COURT: All right.

9 How about medical profession, any of
10 you work for doctors or any healthcare provider?

11 We'll start with you because I saw you
12 first.

13 PROSPECTIVE JUROR 22: I'm a registered
14 nurse.

15 THE COURT: Oh, you are?

16 PROSPECTIVE JUROR 22: Yes.

17 THE COURT: So will that affect your
18 ability to sit here and hear this case?

19 PROSPECTIVE JUROR 22: (No audible
20 response).

21 THE COURT: Thank you.

22 Ma'am?

23 PROSPECTIVE JUROR 23: Number 23. I
24 work for Shady Grove Hospital, patient
25 administration.

1 THE COURT: All right. How about the
2 magic question? Will that affect your ability
3 to be fair?

4 PROSPECTIVE JUROR 23: No.

5 THE COURT: All right. And?

6 PROSPECTIVE JUROR 19: Number 19, sir.
7 I'm a clinical engineer. I (inaudible) there.

8 THE COURT: Well, what's your -- I know
9 you said you work with some --

10 PROSPECTIVE JUROR 19: Sir, I
11 usually --

12 THE COURT: -- doctors' offices, so I
13 guess that's healthcare providers.

14 PROSPECTIVE JUROR 19: Yes, sir. I
15 work for this company called Davita Healthcare
16 Partners, Incorporated. It's mostly dealing
17 with --

18 THE COURT: No, that's all right. I
19 don't have to -- I just want to know if you can
20 be fair.

21 PROSPECTIVE JUROR 19: Yes, sir, I can.

22 THE COURT: And you?

23 PROSPECTIVE JUROR: Well, I previously
24 worked for --

25 THE COURT: Well, what's that number

1 again?

2 PROSPECTIVE JUROR 15: Number 15.

3 THE COURT: All right.

4 PROSPECTIVE JUROR 15: I previously
5 worked for Kaiser Permanente Health Management.

6 THE COURT: And are you all right on
7 this case so far?

8 PROSPECTIVE JUROR 15: Yes, I am.

9 THE COURT: Thank you.

10 Did I get all of your questions, Kevin?
11 I think I got them.

12 MR. FINNEGAN: Yes, Your Honor. Thank
13 you.

14 THE COURT: Okay. So you're all right
15 on the *voir dire*? Are you good on the *voir*
16 *dire*?

17 MR. FINNEGAN: Yes, Your Honor.

18 THE COURT: How about you?

19 MR. DAILY: Yes, Your Honor. Thank
20 you.

21 THE COURT: All right.

22 Now, ladies and gentlemen, I've
23 listened very carefully to some of your issues
24 about this four-day trial and about some other
25 things you've said, and so right now I'm going

1 to excuse and let you walk out of the courtroom
2 these five people:

3 Number 1, you can -- you can go back to
4 the jury room.

5 Number 2, I don't want to interfere
6 with your medical treatment, you go back.

7 Number 7, I've already told you you can
8 go back.

9 Number 12, I'm letting you go back for
10 other reasons, because you're so wishy-washy on
11 this issue, so you go back.

12 And then number 14, who's got a
13 funeral, as I understand it, number 14, you can
14 go back.

15 Now, these numbers I'm moving from
16 where you are to the bottom of the jury sheet,
17 starting with number 4, the lady who works 10:00
18 to 6:00. So they may not get to you, so that's
19 why I'm going to move you to the bottom, because
20 as I said, they start from the top when they get
21 their strikes, and they get these automatic
22 strikes. They don't have to tell me why under
23 our procedure.

24 PROSPECTIVE JUROR 4: Okay.

25 THE COURT: So you're now on the

1 bottom, but there's another bottom. The bottom
2 is a little longer.

3 Number 8 -- also, the caregivers I'm
4 moving to the bottom. So number 8 is at the
5 bottom, number 9 is at the bottom. So I've
6 moved three of you to the bottom.

7 Did I get that -- and the rest of you
8 who are caregivers, they're already on the
9 bottom.

10 So did I get them, Counselors, as we
11 spoke about this? Are you okay with what we
12 talked about?

13 MR. FINNEGAN: Yes, Your Honor. I
14 think that's what Your Honor indicated.

15 THE COURT: And how about you, sir?

16 MR. DAILY: Yes, sir.

17 THE COURT: Now, I want you lawyers to,
18 on a piece of paper -- and then I want you to
19 give it to the Clerk -- put down your strikes,
20 just numbers only, starting from the top, and
21 I'm going to give you five strikes, so you can
22 put five numbers down.

23 And, ladies and gentlemen, what happens
24 as a result of this, it's a process of
25 elimination. Whoever's left over after these

1 strikes, that's our jury. Now, they're only
2 getting ten strikes, so I don't think we're
3 going to get down to -- I don't think we're
4 going to get down to the people who are the
5 caregivers, but we'll see. I just don't have
6 enough jurors here to let you go. Otherwise, I
7 might have let you go, but you might go anyway
8 if they don't get to you.

9 **(Pause in the proceedings.)**

10 THE COURT: Do you know it's almost
11 12:30 and we haven't called the first witness?

12 **(Pause in the proceedings.)**

13 THE CLERK: Ladies and gentlemen of the
14 jury, as I call your number, please stand and
15 answer by saying "here," then have a seat in the
16 jury box.

17 Juror number 13.

18 THE BAILIFF: Answer "here."

19 PROSPECTIVE JUROR 13: Here.

20 THE CLERK: Juror number 15.

21 PROSPECTIVE JUROR 15: Here.

22 THE CLERK: Juror number 17.

23 PROSPECTIVE JUROR 17: Here.

24 THE CLERK: Juror number 18.

25 PROSPECTIVE JUROR 18: Here.

1 THE CLERK: Juror number 19.
2 PROSPECTIVE JUROR 19: Here.
3 THE CLERK: Juror number 23.
4 PROSPECTIVE JUROR 23: Here.
5 THE CLERK: Juror number 24.
6 PROSPECTIVE JUROR 24: Here.
7 THE CLERK: And juror number 25.
8 PROSPECTIVE JUROR 25: Here.
9 THE BAILIFF: You can use the back row,
10 too.
11 THE COURT: Is the plaintiff satisfied
12 with the jury panel?
13 MR. FINNEGAN: Yes, Your Honor.
14 THE COURT: Defendant?
15 MR. DAILY: Yes, sir, Your Honor.
16 THE COURT: Swear the jury panel, Madam
17 Clerk.
18 THE CLERK: Can you please stand and
19 raise your right hands.
20 **(Jury panel sworn.)**
21 THE CLERK: You may be seated.
22 THE COURT: Members of the jury panel
23 and who have participated in this selection
24 process, thank you very much. You can return to
25 the jury room.

1 **(Other Jurors Excused.)**

2 THE COURT: Let me see who my jury is.

3 Number 1 -- number 13? No, just stay
4 where you are. I want to take a look at you
5 because I have to pick a chairman or a foreman.

6 Number 15? Number 17? Who's 17?
7 Yeah, just put up your hand, because I don't
8 know where you're sitting.

9 Number 18? Number 19? Number 23?
10 Okay. Well, that's my jury. Six members of the
11 panel become the jury in civil cases. Criminal,
12 it's 12, but civil, six.

13 Now, I've got these two people back
14 here. They're alternates. That doesn't mean
15 that you can fall asleep. It means that you
16 might be able to be a seventh and eighth juror
17 at the end of this case, we don't know, or if
18 somebody should not be able to make it back
19 here, then you will just fit into their slot.

20 So number 24? That would be you. And
21 number 25? That would be you. If you need a
22 letter for Chik-Fil-A, I'll be happy to have
23 something ready for you. Just give me a name
24 and address. That goes for any of you that have
25 issues with your employer.

1 My Foreman of this jury is number 19.

2 That would be you.

3 JUROR 19: Yes, sir.

4 THE COURT: So you're the Foreman.

5 JUROR 19: Yes, sir.

6 THE COURT: Everything's going to go
7 through you, exhibits and so on, and you just
8 pass them down to the rest of the panel,
9 including the alternates.

10 JUROR 19: Yes, sir.

11 THE COURT: Now, when you come back, I
12 want you to sit in this first chair, because
13 that's where the documents will be starting.

14 JUROR 19: Yes, sir.

15 THE COURT: The rest of you can sit
16 anywhere you want. The back is all available to
17 you. You can spread yourselves out, be
18 comfortable, not too comfortable, but...

19 Now, what are we going to do? You
20 haven't had your lunch. Nobody's had their
21 lunch and here it is past 12:30. There used to
22 be a couple of places to eat nearby. Now,
23 you've got to go to West Virginia or something
24 to find a place to eat around Marlboro, and that
25 goes for all of us. Most of the clerks just

1 bring their own lunch.

2 I should give you an hour for lunch,
3 because you may be walking around town a little
4 bit looking for a lunch spot, and the lawyers
5 have to eat, although they do better when they
6 don't eat. It puts them on the edge. So what
7 do you say we all come back at 1:30, which means
8 really you should get back a little bit before
9 1:30.

10 Mr. Barnes, do you want them here or do
11 you want them to --

12 THE BAILIFF: Just meet me at M-24 --

13 THE COURT: Is that the jury room?

14 THE BAILIFF: -- in the jury lounge,
15 where you came in this morning.

16 THE COURT: You know where that is. Of
17 course, you know where this is, too. In the
18 future, maybe from tomorrow on, we can meet
19 here, but we'll worry about that later. So go
20 ahead and go get yourself a lunch. Try to get
21 back to the jury room around 10 after, somewhere
22 around there, so Mr. Barnes will -- what did I
23 say 10? No, I don't want you back that early.
24 Maybe 20 after 1:00, 25 after, just so you're
25 there so that he can get you down here in five

1 minutes so we can start at 1:30.

2 At 1:30, you'll listen to opening
3 statements and then the evidence. The plaintiff
4 goes first, as you probably know, and then the
5 defendant puts on its case, okay? Have a good
6 lunch.

7 (Jury excused.)

8 (Lunch recess, 12:26 p.m. to 1:30 p.m.)

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